Control Number: 51841

Item Number: 41

PROJECT NO. 51841

REVIEW OF 16 TAC §25.53 RELATING TO ELECTRIC SERVICE EMERGENCY OPERATIONS PLANS	§ § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING NEW 16 TAC §25.53
AS APPROVED AT THE FEBRUARY 25, 2022 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.53, relating to electric service emergency operations planning. The commission adopts this rule with changes to the proposed rule as published in the December 17, 2021 issue of the *Texas Register* (46 TexReg 8414). This rule implements standards for emergency operations plans for electric utilities, transmission and distribution utilities, power generation companies (PGC), municipally owned utilities (MOUs), electric cooperatives, retail electric providers (REPs), and the Electric Reliability Council of Texas (ERCOT) as required by Tex. Util. Code §186.007 as amended by Senate Bill 3 (SB 3) in the 87th Legislature Regular Session.

The commission received comments on the proposed rule from City of Houston, Sharyland Utilities LLC (Sharyland), Texas Public Power Association (TPPA), Texas Electric Cooperative's Inc. (TEC), AEP Texas Inc., Electric Transmission Texas, LLC, and Southwestern Electric Power Company (collectively, AEP), Guadalupe Valley Electric Cooperative Inc. (GVEC), Texas-New Mexico Power Company (TNMP), Entergy Texas Inc. (Entergy), the Lower Colorado River Authority and Lower Colorado River Authority Transmission Services (collectively, LCRA), the Steering Committee of Cities Served by Oncor (OCSC), Southwestern Public Service Company (SPS), Texas Competitive Power Advocates

AM

(TCPA), Oncor Electric Delivery Company LLC (Oncor), Office of Public Utility Counsel (OPUC), Enbridge Inc. (Enbridge), El Paso Electric Company (EPEC), CenterPoint Energy Houston Electric LLC (CenterPoint), Alliance for Retail Markets (ARM), Texas Legal Services Center (TLSC), Octopus Energy (Octopus), and East Texas Electric Cooperative Inc. (ETEC).

The following entities testified at a public hearing on the proposed rulemaking held on January 11, 2022: TLSC on behalf of itself and the Durable Medical Equipment Task Force (DMETF), the Texas Council of Medical Disabilities (TCMD) on behalf of itself and DMETF, Texas Medical Equipment Providers Association (TexMEP), Disability Rights Texas (DRT), Angel Medical Supply (AMS), Arc of Dallas-Fort Worth, Medical Legal Partnership (MLP), and Texas Parent to Parent (TPP). The following individuals also testified at the January 11, 2022, public hearing on the proposed rulemaking: Laura Taylor, Adrian Trigg, Laura Lehman, Amy Litzinger, Linda Litzinger, Ellen Bowman, Greta James, and Valerie Doggett.

General Comments

Entergy emphasized that its EOP has been developed over time based on many factors including the "collective operating experience" of the company and its affiliates. As such, Entergy requested that the proposed rule reflect practical considerations of individual companies and avoid requiring the "creation of a parallel plan in a different format" that serves the same purpose, as such an endeavor would consume considerable resources and risk confusion.

Commission Response

The rule does not require entities to create new or multiple EOPs. Existing plans that contain, at a minimum, the information detailed in the rule will satisfy the rule's requirements, as will a collection of pre-existing documents, such as specific procedural manuals, that each contain portions the required information. The rule also does not require an entity to follow the outline of the rule when drafting its plan to be filed. Moreover, an entity must file an executive summary of its emergency operations plan that includes specific references to locate the mandatory content.

Enbridge argued that the proposed rule creates unnecessary administrative burdens, exposes utilities to unnecessary commercial harm with no proportionate benefit to grid reliability, and unintentionally limits a utility's discretion to manage safety programs. Enbridge contended that ERCOT or the commission is not best situated to unilaterally determine what is necessary for an EOP. Lastly, Enbridge noted that any change requested by either ERCOT or the commission requires a significant time investment to review, test, and implement and urged the commission to consider these factors in its rulemaking.

Commission Response

The commission disagrees with Enbridge's assessment of the proposed rule as unduly burdensome. Tex. Util. Code §186.007 explicitly requires the commission to analyze and evaluate emergency operations plans to assess the ability of the electric utility industry to withstand extreme events. Emergency operations plans must contain sufficient information for the commission to complete this determination. Moreover, this rule does not limit an entity's ability to tailor its emergency operations plan to its system. If an entity does not have

plans that address one or more of the specific minimum requirements, then the entity must create that plan based on the entity's unique knowledge of its personnel, operations, system, and facilities. However, this rule does not require an entity to substantively alter the contents of its emergency operations plan, so long as that plan is complete. The commission more substantively addresses Enbridge's concerns in response to comments on subsection (d)(2).

ETEC highlighted that EOPs must be limited in scope to effectively assist utility personnel in responding to an emergency event. ETEC argued that the commission has authority under PURA §41.004(5)(A) "to require reports of electric cooperative operations only to the extent necessary to ensure the public safety" and requested the commission modify the rule as necessary to make clear that "no unintended jurisdictional expansion is created or implied."

Commission Response

The commission declines to modify the rule in response to the general comments of ETEC. The requirements of the adopted rule are within the commission's jurisdiction under Tex. Util. Code §186.007(a-1).

TCPA advised that an EOP is not a singular document, but a compendium of procedures implemented by various teams across an organization in response to certain emergency conditions. As a result, TCPA argued that the proposed rule requirements for a consolidated EOP would diminish the usefulness of emergency procedures that are located in a potentially voluminous consolidated EOP.

Commission Response

As previously noted, the rule does not require an entity to change existing emergency operations plans, except to the extent that those plans do not address the required criteria. The rule does not require a particular organization or format for the EOP. However the executive summary must identify how the EOP – in whatever form it takes – fulfills the minimum requirements of this rule.

ARM argued that the proposed rule significantly and unnecessarily adds to the requirements a REP must provide in its EOP and requested the commission revise the proposed rule so that the imposed requirements are not overly burdensome or risk disclosure of sensitive information.

Commission Response

The requirements of Tex. Util. Code §186.007 apply to retail electric providers. Therefore, the adopted rule applies to retail electric providers. The commission addresses the sensitivity of the information included in an EOP in response to comments on subsection (c).

City of Houston recommended that the proposed rule require an entity to notify affected critical infrastructure customers in advance of filing updated EOPs or annexes to provide those customers with an initial opportunity to provide feedback.

Commission Response

The commission declines to require entities to provide notice of changes to its EOP to a critical infrastructure customer prior to filing those changes with the commission as

requested by the City of Houston. An entity may serve numerous critical infrastructure customers. Such a requirement could create significant delays in implementing changes to EOPs, as well as result in the disclosure of sensitive information to countless other entities. Moreover, an entity's EOP is the repository of its own emergency procedures. With some limited exceptions, each entity is in the best position to determine when it needs input from third parties prior to implementing changes to its EOP.

EOP Public Hearing

On January 11, 2022, a public hearing was held relating to proposed §25.53. Commenters at the public hearing were individuals with disabilities or medically dependent on electricity due to the use of Durable Medical Equipment (DME), or their representatives, and other interested parties with comments that relate to residential critical load customers, emergency preparedness, and experiences from Winter Storm Uri.

Commission Response

The commission thanks the organizations and individuals who participated in the hearing held on January 11, 2022, and sincerely appreciates the personal stories shared by attendees. The commission endeavors to account for the collective concerns of the hearing participants and has taken those concerns into account where appropriate within the scope of the rules.

TLSC, DMETF, TCMD, TexMep DRT, AMS Arc of Dallas-Fort Worth, MLP, TPP, Ms. Taylor, Mr. Trigg, Ms. Lehman, Amy and Linda Litzinger, Ms. James, and Ms. Doggett, recommended that the proposed rule require providers of electricity to prioritize maintaining electric service for

medically fragile individuals and those who are medically dependent on electricity when planning for load shed and power restoration during energy emergencies. DRT stated that the proposed rule does not specify the prioritization of residential critical customers in an EOP. TPP recommended that houses with a critical need, such as use of DME, receive uninterrupted power during an emergency.

Commission Response

The commission .cannot require utilities to guarantee individuals an uninterrupted supply of power during an energy emergency, because the circumstances surrounding an energy emergency may make such a task impossible. Qualifying individuals can apply for critical status under §25.497, and under §25.52 customers with special in-house life-sustaining equipment are considered critical load. Under adopted clause (e)(1)(B)(iii) of this rule, the entities that are responsible for implementing load shed must include a load shed annex that contains a procedure for maintaining an accurate registry of critical load customers. However, determining how utilities should prioritize among various critical load entities for load shed and power restoration purposes is beyond the scope of this rulemaking project. The commission anticipates addressing critical loads in a future rulemaking project, which may be informed by insights from analyzing the load shed annexes required by this rule.

TLSC and the Texas Council of Medical Disabilities (TCMD) on behalf of itself and the DMETF recommended the proposed rule include a disability annex as part of the required annexes under proposed subsection (e).

Commission Response

The commission declines to adopt the specific recommendations of TLSC, DMETF, and TCMD to include a separate disability annex. An annex is designed to address how an entity plans to respond in an emergency involving a specific type of hazard or threat. However, as previously discussed, adopted clause (e)(1)(B)(iii) establishes a procedure for maintaining an accurate registry of critical load customers under the load shed annex. This annex also requires inclusion of processes for providing assistance to critical load customers in the event of an unplanned outage, for communicating with the critical load customers, for coordinating with government and service agencies as necessary during an emergency, and for training staff with respect to serving critical load customers.

Ms. Doggett, Ms. Lehman, MLP, and AMS recommended the commission take the extraordinary costs incurred by medically fragile individuals and individuals medically dependent on electricity associated with the winter storm into account in the proposed rulemaking. Ms. Doggett emphasized that the costs incurred when power is lost due to an emergency can quickly become unmanageable, such as purchasing a generator, in addition to pre-existing costs that include medication and therapy. Ms. Lehman and AMS commented on the expense and time commitment involved with dealing with Medicaid and Medicare for a backup generator or DME, which is often not covered. AMS stressed that backup DME can be crucial for individuals medically dependent on electricity during an emergency and is an unrecoverable, added expense for small medical suppliers and patients alike. MLP recommended the commission adopt a proactive, responsive approach to the proposed rule to assist all members of the community and to assist in mitigating historical inequities in power and housing.

Commission Response

Costs incurred by medically fragile individuals and those medically dependent upon electricity during a winter storm are beyond the scope of this rulemaking. However, the commission's analysis of EOPs is an important part of its effort to focus on maintaining service during emergencies so that these costs are not incurred in the first place.

TLSC, TCMD, DRT, and Ms. Doggett stressed the importance of wellness checks for disabled individuals and those medically dependent on electricity.

Commission Response

The commission declines to modify the language of this rule to add a requirement for entities subject to this rule to conduct wellness checks. Wellness checks are addressed in Tex. Gov. Code Chapter 418, and are beyond the scope of this rulemaking.

Arc of Dallas-Fort Worth and Ellen Bowman emphasized that water supply is just as crucial as electricity during an emergency event and recommended that utilities that support disabled individuals, such as water companies, also be designated as critical and receive an uninterrupted supply of power.

Commission Response

The issue of water supply is beyond the scope of a rulemaking on electric industry EOPs, except as it relates to water facilities as critical customers of electric service. The commission

is working with water utilities to ensure that electric utilities are provided with information regarding which water facilities are critical so that this information can be considered for load shed planning. The commission may address this topic further through a guidance document or as a part of future rulemakings on critical load.

TLSC commented that the confidentiality and sharing of critical load customer information should be addressed in the proposed rule, specifically as it relates to allowance for dissemination of residential critical customer information from an entity during an emergency.

Commission Response

TLSC's proposal relates to 16 TAC §25.497 and is therefore outside the scope of this rulemaking. The commission notes that the load shed annex under adopted subparagraph (e)(1)(C) requires entities to plan for the sharing of critical customer information and therefore addresses TLSC's concerns regarding the sharing of critical customer information to relevant institutions during an emergency.

Lastly, TLSC encouraged the commission to hold further meetings and workshops similar to the hearing on other rulemakings related to emergency preparedness.

Commission Response

The commission is engaged in a wide array of rulemakings and policy projects related to the winter storm and will continue to hold hearings and workshops as appropriate.

Proposed §25.53(a) – Applicability

Proposed subsection (a) makes §25.53 applicable to each electric utility, transmission and distribution utility, power generation company (PGC), municipally owned utility, electric cooperative, and retail electric provider (REP), and the Electric Reliability Council of Texas (ERCOT). Proposed subsection (a) also clarifies that the term "entity" as used in proposed §25.53 is used in reference to the entities subsection (a) lists.

TPPA recommended the commission revise subsection (a) to encourage but not require distribution-only MOUs to file EOPs with the commission. TPPA argued that, as proposed, the rule would "present a substantial regulatory burden on distribution-only entities" due to the amount of information required in a specific format. TPPA maintained that the proposed rule would decentralize emergency response and therefore create more confusion during an emergency as smaller MOUs may be forced to create utility-specific EOPs rather than utilize existing city-wide EOPs. Lastly, TPPA stated that distribution-only MOUs are served by transmission entities that are required to file an EOP, which would address the commission's grid reliability concerns as transmission utilities are "most responsible for emergency response" and therefore the entities that should bear "the regulatory and administrative burden" imposed by the proposed rule.

Commission Response

The commission declines to remove the requirement for distribution-only MOUs to file EOPs with the commission. Tex. Util. Code §186.007 requires MOUs, including distribution-only MOUs, as well as other types of entities listed under subsection (a) of the adopted rule to file EOPs with the commission. A distribution-only MOU is an essential part of the electric grid

for the customers it serves. Therefore, the commission must have the ability to analyze a distribution-only MOU's EOP to make an adequate determination under Tex. Util. Code §186.007 regarding the ability of the electric grid to withstand extreme weather events.

Definition of "Entity"

TCPA, ARM, and OPUC recommended the last sentence of subsection (a) stating "The term 'entity' as used in this section refers to the above-listed entities" be deleted, and that the term "entity" be defined in subsection (b). ARM stated entities that share a parent company should be permitted to file a single EOP, with shared and unique sections specified.

Commission Response

The commission agrees with TCPA, ARM, and OPUC that a definition of "entity" should be added to subsection (b) and revises the subsection accordingly. The commission agrees with ARM's recommendation regarding duplicative requirements among commonly-owned entities, but finds that the issue is more appropriately addressed in subsection (c).

Proposed §25.53(b)(1) – "Annex"

Proposed subsection (b) lists the definitions exclusive to proposed §25.53 that are supplemental to the general definitions under §25.5 that are applicable to Chapter 25 of the Texas Administrative Code.

Proposed paragraph (b)(1) defines the term "annex" for use within §25.53 as "a section of an emergency operations plan (EOP) that addresses how an entity plans to respond to the incidence of a specific hazard or threat."

CenterPoint suggested "the incidence of a specified hazard or threat" be replaced with the phrase "specified emergencies" for paragraph (b)(1) defining "annex."

Commission Response

In response to CenterPoint's comment, the commission revises the definition of "annex" to refer to "a section of an emergency operations plan (EOP) that addresses how an entity plans to respond in an emergency involving a specified type of hazard or threat."

Proposed §25.53(b)(2) – "Drill"

Proposed subsection (b)(2) defines the term "drill" for use within §25.53 as "an operations-based exercise that is a coordinated, supervised activity employed to test an entity's EOP. A drill may be used to develop or test new policies or procedures or to practice and maintain current skills."

CenterPoint suggested "that is a coordinated, supervised activity employed" be deleted from paragraph (b)(2) defining "drill."

Commission Response

The commission disagrees with CenterPoint's recommendation to delete the reference to coordination and supervision in the definition of "drill". Coordination and supervision are essential elements of a drill and distinguish a drill from other activities that support an entity's preparation for emergencies.

Proposed §25.53(b)(3) – "Emergency"

Proposed subsection (b)(3) defines the term "emergency" for use within §25.53 as "any incident resulting from an imminent hazard or threat that endangers life or property or presents credible risk to the continuity of electric service. The term includes an emergency declared by local, state, or federal government; ERCOT; or a Reliability Coordinator that is applicable to the entity."

ARM, CenterPoint, AEP, EPEC, TCPA, Oncor, TNMP, Sharyland, TPPA, SPS, and Entergy generally opposed the proposed definition of "emergency" under proposed subsection (b)(3). TLSC supported the proposed definition of "emergency" in its testimony at the public hearing held on January 11, 2022, which is addressed under the heading for the same. ARM stated that the term "emergency" does not appear elsewhere in PURA or in commission rules and stated that it is not clear what "presents credible risk to the continuity of electric service" means. ARM recommended that for administrative clarity, the commission adopt a similar definition for the term "emergency" as the term "emergency condition", as used in the ERCOT Nodal Protocols. ARM noted that governmental entities are more likely to declare a "disaster" such as for a hurricane, whereas ERCOT or other reliability coordinators are more likely to declare an "emergency" such as an energy emergency alert. ARM recommended clarifying the definition of "emergency" by indicating that not every "disaster" or "emergency" warrants usage of an entity's EOP and revising paragraph (b)(3) accordingly. Specifically, ARM recommended the definition be modified to "better specify what may constitute endangerment to the continuity of electric service, with conforming changes to the definition of 'emergency operations plan'".

CenterPoint recommended revising the definition of "emergency" to include "existing or imminent hazards" and to give an entity reasonable discretion in classifying a hazard or threat as an emergency.

AEP and EPEC recommended limiting the proposed definition of "emergency" under (b)(3) "to situations that credibly risk continuity of electric service that also result in an emergency declaration by a local, state, or federal government, RTO, or ERCOT or other reliability coordinator." TCPA commented that the proposed definition of "emergency" under (b)(3) should be revised to include "existing or imminent hazards" and to give an entity reasonable discretion in classifying a hazard or threat as an emergency.

Oncor recommended a utility's EOP be triggered when there is a "system emergency" as defined under §25.5 (relating to Definitions) instead of "when there is a risk of service interruption to a single customer or small group of customers." Subsection 25.5(128) defines "system emergency" as a "condition on a utility's system that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property." TNMP commented that the definition of "emergency" under (b)(3) improperly includes instances where the "credible risk" of service interruptions is small which are generally handled through a utility's standard service restoration procedures. TNMP argued that EOPs are generally in anticipation of or during significant events such as a hurricane and, like Oncor, recommended the proposed definition be consistent with the definition of "system emergency" under §25.58(128) and, consistent with historical practice, only encompass significant events rather than events that impact only a small number of customers.

Sharyland commented that the phrase "continuity of electric service" as used in (b)(3) was overly broad and any interruption of service, even when very limited or no customers experience outages, could therefore be classified as an "emergency." Sharyland emphasized that EOPs are typically utilized "in response to a credible, imminent threat to a significant portion of the system" which is consistent with the proposed rule and that the proposed rule should "focus on the response to major events that pose significant risks to the continuity of electric service on the grid." Accordingly, Sharyland recommended revising the definition of "emergency" to replace "to the continuity" with "of a significant interruption."

TPPA also commented that the proposed definition of "emergency" under (b)(3) is overly broad as it could feasibly encompass emergencies unrelated to the continuity of electric service and therefore unnecessarily increase the scope of EOPs beyond the intended focus on electric grid stability. Like Sharyland, TPPA expressed concern that the proposed definition "could be read to apply to incidental, limited, and brief interruptions of service that do not result from or cause emergency conditions." Accordingly, TPPA provided draft language striking "endangers life or property from the proposed definition of "emergency" and adding the term "sustained" prior to "continuity of electric service.

TPPA further recommended the term "emergency" be limited to "an emergency or disaster declared by local, state, or federal government; ERCOT; or a Reliability Coordinator that is applicable to the entity." TPPA argued that government entities "will declare states of emergency or disaster as appropriate" and that the commission should not list other events outside of that

scope. TPPA noted that the language in the current version of §25.53 includes, but is not limited to, that circumstance. SPS also commented that the definition of "emergency" under paragraph (b)(3) was overly broad and that an "emergency" for the same reasons as TNMP with the additional qualifier that the term be confined to emergency declarations "by entities empowered to coordinate regional or state-wide responses to such event." Specifically, SPS expressed that the focus of the EOP and this rulemaking is to "address significant, material threats to reliability" and that the rule should not contemplate emergencies that do not involve a threat to grid reliability. SPS extended this rationale to its comments regarding subsection (g) and provided draft language for proposed paragraph (b)(3) replacing "the term includes" with "that results in."

Entergy also requested that the commission replace the use of the term "incident" with the defined term "emergency" under paragraph (b)(3), as defined by AEP, where applicable as the term "incident" is undefined.

Commission Response

The commission revises the definition of emergency to clarify that, for purposes of this rule, whether an emergency exists for a particular entity depends on how a situation would impact that entity. A key factor in an entity's preparation for emergencies is the process and standards by which it determines whether an emergency exists.

The commission moves the reference to continuity of electric service from the definition of "emergency" to the definitions of "hazard" and "threat" because those terms are intended to cover all types of emergencies. Additionally, in response to comments that the term

"emergency" should not include all credible risks to the continuity of electric service, the commission revises the definition of emergency to limit it to a hazard or threat that is sufficiently imminent and severe that an entity should take prompt action to prepare for and reduce the impact of harm that may result from the hazard or event. Furthermore, although the definitions of hazard and threat are comprehensive, the rule requirements for information on specific types of emergencies to be included in an EOP are limited to those that could readily cause a significant disruption of electric service. Entities are encouraged to address additional types of emergencies not otherwise required in the EOP.

Additionally, the definition of emergency expressly refers to an emergency declared by local, state, or federal governments; ERCOT; or another reliability coordinator designated by the North American Electric Reliability Corporation (NERC). However, the defined term is limited to such a declared emergency that is applicable to the entity. An entity must exercise judgment to determine whether any such declaration or situation referred to by another designation, such as a disaster, constitutes an emergency under its EOP.

Proposed §25.53(b)(4) – "Emergency Operations Plan"

Proposed subsection (b)(4) defines the term "emergency operations plan" for use within §25.53 as "the plan and attached annexes, maintained on a continuous basis by an entity, intended to protect life and property and ensure continuity of adequate electric service in response to an emergency."

Enbridge opposed the inclusion of "providing adequate electricity during an emergency" in the definition of "emergency operations plan" under proposed paragraph (b)(4). Enbridge argued that

EOPs are not "intended to establish performance standards" and as such are not within the scope of the proposed rule. Enbridge emphasized that EOPs are intended to address "potential threats to life or property," prioritize safety of personnel, and preserve or restore the generation resource. Enbridge commented that the proposed rule inappropriately requires a specific performance standard that would distract from the objectives of an EOP and provided draft language striking "and ensure continuity of adequate electric service" from the proposed definition.

TCPA agreed with the intent of the proposed definition of "emergency operations plan" under paragraph (b)(4) but expressed that each entity has limited control over the electric grid and that it is impossible to "ensure" continuity of electric service during an emergency. Consistent with its recommendations for paragraph (b)(3) defining "emergency" ARM suggested that for administrative clarity, the commission adopt a similar definition for the term "emergency operations plan" under proposed paragraph (b)(4), as the term "emergency condition" as used in the ERCOT Nodal Protocols.

Commission Response

The commission deletes the definition of "emergency operations plan" under proposed subsection (b)(4), because it is unnecessary. The rule contains various provisions that define an emergency operations plan. The commission moves the requirement that the plan be maintained on a continuous basis to adopted paragraph (c)(3).

Proposed §25.53(b)(5) – "Hazard"

Proposed subsection (b)(5) defines the term "hazard" for use within §25.53 as "a natural, technological, or human-caused condition that is potentially dangerous or harmful to life, information, operations, the environment, or property."

TCPA recommended proposed paragraph (b)(5) be deleted but, if the commission declines to do so recommended striking "information, operations, the environment" from the proposed definition of "hazard" and after "property" add "or the continuity of electric service."

ARM recommended the definition of "hazard" under proposed paragraph (b)(5) be aligned with the definition of "emergency" under proposed paragraph (b)(3) as each definition includes "references to 'information,' 'operations,' and 'the environment,' but not the continuity of electric service." ARM noted that such terms are both expansive and restrictive as they may require EOPs to include information that is not relevant to system or grid reliability, yet also limit the scope of hazards contemplated by EOPs. ARM therefore recommended that the term "hazard" instead be left to its plain meaning and that proposed paragraph (b)(5) should be deleted from the proposed rule.

Commission Response

The commission declines to delete the definition of "hazard". The ordinary meaning of hazard lacks sufficient precision for the rule. In addition, the definition of "hazard" under adopted paragraph (b)(5) along with the definition of "threat" under adopted paragraph (b)(6) and revised definition of "emergency" under adopted paragraph (b)(3) are intended

to comprehensively define situations that an EOP should address. The commission revises the definition of "hazard" to include a "condition that is potentially dangerous or harmful to the continuity of electric service."

Proposed §25.53(b)(6) – "Threat"

Proposed subsection (b)(6) defines the term "threat" for use within §25.53 as "the intention and capability of an individual or organization to harm life, information, operations, the environment, or property."

TCPA recommended proposed paragraph (b)(6) be deleted but, if the commission declines to do so recommended striking "information, operations, the environment" from the proposed definition of "threat" and after "property" adding "or the continuity of electric service." Consistent with its comments regarding paragraph (b)(5) defining "hazard", ARM further recommended proposed paragraph (b)(6) defining "threat" be deleted and the term left to its plain meaning.

Commission Response

Consistent with the discussion of the definitions of "emergency" and "hazard", the commission declines to delete the definition of "threat." The commission revises the definition of "threat", adding "including harm to the continuity of electric service" to the end of the definition.

Proposed §25.53(c) – Filing requirements

As a prefatory note, due to an inconsistency in the numbering for subsection (c) between the proposed version of the rule filed on the commission's website and the version of the rule published in the Texas Register, the headings, responses and other references to "proposed" provisions of (c) are referring to the numbering used in the version of the rule filed on the commission's website.

Proposed subsection (c) details the filing requirements for EOPs by an entity under this section.

LCRA requested the commission clarify the procedure for entities to file unredacted EOPs and "the applicability of the commission's existing procedural rules for the filing of confidential or voluminous materials." LCRA also urged the commission to establish a secure method for required parties to file unredacted EOPs that is only accessible to relevant commission staff and meets the industry leading cybersecurity and encryption specifications. Until that is established, LCRA recommended that the commission allow required entities to file confidential information in their EOPs with Central Records under §22.71(d) (relating to Confidential material). LCRA also requested that the rule clarify that the portions redacted or withheld by the filing party of the EOPs are confidential and not subject to public disclosure.

Commission Response

The commission declines to make the changes recommended by LCRA because they are not relevant to the adopted rule, which only requires the submission of a redacted copy of an entity's EOP to the commission. Under adopted subparagraph (c)(3)(E), an entity must

make its unredacted plan available to commission staff at a designated location upon request and must file a complete plan with confidential portions removed for public inspection in accordance with Tex. Util. Code §186.007(f).

The commission's procedural rules regarding electronic filings and confidential filings are currently under review. As a practical matter, the commission's website is presently able to accept both public and confidential filings electronically.

In the alternative LCRA requested that the commission allow required entities to keep their unredacted EOPs available for inspection by appropriate commission staff at a designated location in Austin, as allowed in §22.144(h) (relating to requests for information and requests for admission of facts) for production of voluminous materials.

Commission Response

The commission agrees with LCRA's alternative suggestion and reverts back to the language of the repealed version of this rule requiring an entity to make its unredacted plan available to commission staff at a location designated by commission staff under adopted subparagraph (c)(3)(E).

City of Houston requested that the summary after-action reports required under this subsection include details on critical infrastructure that was partially served by the provider, why it was not fully served, and changes that will address the issue. City of Houston further commented that this

portion could be included in a confidential version of the after-action report and this information should be directly communicated to the critical infrastructure owner after such an event.

Commission Response

The intent of the rule is to require an entity to develop, maintain, and update its EOP on a regular basis, not to create a permanent forum for an entity to receive feedback on any individual emergency response. Therefore, the commission removes the proposed requirement that an entity provide an updated EOP 30 days after an activation of its EOP. The adopted rule instead requires an entity to capture its lessons learned from activations of its EOP during the previous calendar year, then provide a revised plan reflecting material changes in how it will respond to an emergency. Accordingly, City of Houston's request regarding summary after-action reports is now moot. The commission notes that under adopted subsection (g), commission staff may require an entity to provide an after-action report following activation of an entity's EOP.

OCSC supported the full disclosure of unredacted EOPs and recommended the commission impose minimum requirements on any utility making a claim of confidentiality "to show specifically why each component of the filing is confidential" in the interest of providing as much useful information to customers, particularly regarding communications plans. In addition, OCSC commented that it is crucial for the industry to align with ERCOT on emergency communications. Additionally, OCSC urged the commission to utilize information and data from filed EOPs for future policymaking efforts to maximize the benefit of agency efforts for the industry and consumers.

Commission Response

The commission disagrees with OCSC's comments in favor of full disclosure of unredacted EOPs. An EOP is a written plan detailing an entity's processes and actions utilized for response to emergencies and for safeguarding health, property, and continuity of service in such events. It is not, as OCSC suggests, a "tool for customers." The inadvertent release of confidential information in an EOP could represent a threat to grid security and reliability. In consideration of other commenters' proposals and recommendations, the commission removes the requirement to file unredacted plans with the commission under adopted subparagraph (c)(1)(A) and instead permits entities to file a summary of its EOP and a complete EOP with confidential portions removed with the commission. The commission agrees with OCSC that the commission's review of EOPs may provide valuable insights that inform future policy initiatives.

Proposed §25.53(c)(1) – Filing deadline and annual filing

Proposed paragraph (c)(1) requires an entity to file an EOP by April 1, 2022, and beginning in 2023, to annually file an EOP by February 15 of each year in the manner prescribed by the commission.

ARM, TCPA, GVEC TEC, CenterPoint, EPEC, AEP, SPS, Oncor, TNMP, ETEC, and Enbridge expressed concern with the deadlines proposed and requested more time to file EOPs. ARM expressed concern for the initial April 1 deadline and the February 15 annual filing deadline. Because both deadlines correspond with other reporting obligations and deadlines for entities

covered in the rule, ARM stressed that the standing April and February deadlines would be impractical for filing entities. ARM commented that a June 1 deadline is a part of entities' compliance calendar "and naturally aligns with the start of the summer peak season." As such, ARM recommended moving the initial deadline to file an EOP June 1, 2022, or 120 days after the rule becomes effective, and moving the annual filing deadline to June 1. TCPA also recommended this change but specified the change should be made to whichever timeline is later to remain consistent with the start of peak load seasons. GVEC and CenterPoint also recommended extending the initial filing deadline to June 1, 2022. Enbridge recommended a 6-month compliance deadline from rule adoption. Similarly, EPEC recommended a 120-day compliance deadline from rule adoption, while AEP, Oncor, TNMP and SPS recommended a 90-day deadline from the same.

Commission Response

The commission extends the initial filing deadline to April 15, 2022 to provide entities with more time to comply with the rule in recognition of the commission considering the rule for final adoption at a later date than projected when the April 1, 2022 deadline was proposed.

Additionally, to avoid competing with other regulatory reporting deadlines set for February 15 each year, the commission agrees to move the annual emergency operations plan reporting deadline to March 15 by adopting paragraph (c)(3). The commission declines to establish June 1 as the future-year annual reporting deadline as that does not provide the commission sufficient time to analyze plans and submit subsequent reports to the Legislature.

CenterPoint commented that proposed §25.53 exceeds the requirements of SB 3's amendments to Tex. Util. Code §186.007, which states that the commission shall require entities to file an updated plan if it finds that a plan does not contain sufficient information to determine if the entity can provide adequate electric services. CenterPoint notes that the commission "has not made any findings since Senate Bill 3's effective date that an applicable entity's currently filed EOP 'does not contain adequate information to determine whether the entity can provide adequate electric services,'". CenterPoint indicated that it will follow the rule, as adopted, but requests additional time to compile a new EOP.

Commission Response

The commission disagrees with CenterPoint's contention that the commission must find an EOP inadequate before requiring the entity to file an updated EOP. If, indeed, an entity's currently filed EOP adequately meets the requirements of this rule, that entity is not required to compile a new EOP. As discussed under the General Comments heading, existing plans that contain the information required in the rule will satisfy the rule's requirements, as will a collection of pre-existing documents, such as specific procedural manuals, that each contain portions of the required information. The commission does not require an entity to redraft or reformat its emergency operations plans. Only emergency operations plans that do not contain adequate information must be updated for purposes of the rule.

As a separate matter, the commission extends the initial filing deadline to June 1, 2022 for MOUs in recognition of the fact that the version of §25.53 that is currently being repealed did not apply to MOUs, and these entities may have to generate a completely new EOP.

AEP, CenterPoint, and LCRA commented that because each entity is required to file an updated EOP when a significant change is made, the annual EOP requirement should be removed from the rule as "the costs of an annual EOP filing outweigh the benefits." Like other commentors, ETEC recommended that entities only file new EOPs when substantial changes have been made. ETEC suggested that the annual affidavit remain for attesting to proper and continued training and allowing entities the option to attest that the previously filed EOP is unchanged instead of the annual filing requirement.

TEC similarly proposed changing the rule language to remove the automatic annual filing requirement. TEC argued that EOPs should only be required to be filed annually if the entity "activated its EOP" and needs to include an after-action report.

TPPA interpreted an EOP as "the collation of an entity's emergency procedure documents into a single document, using a template that matches, on a 1:1 basis." Therefore, due to the initial EOP deadline, TPPA recommended modifying the rule language to require entities to submit their current, existing EOPs. This would allow commission staff, or a consultant, to review EOPs and provide entities with analysis and recommendations as necessary. TPPA stated that such a process would be effective, targeted and provide actionable steps without creating substantial regulatory

burdens. For the longer term, TPPA recommended allowing flexibility for non-substantive changes to the form of the filing, if the filing clearly indicates where the information can be located.

Commission Response

The commission agrees with the comments from AEP, CenterPoint, TEC, LCRA and TPPA that the intent of the rule is to require an entity to develop an EOP with certain minimum requirements, maintain that EOP over time, and regularly revise the EOP to reflect material changes to how the entity would respond to a future emergency. The commission also agrees that filing an EOP can be burdensome, so the commission removes the requirement that an entity file an updated EOP when a significant change is made. Under adopted paragraph (c)(3), the commission adopts requirements related to regular updates to an entity's EOP. Each year by March 15, an entity must either file a revised version of its EOP or provide an attestation that no material changes were made to the EOP in the previous calendar year. The adopted paragraph also requires an entity to update the information filed with its EOP if commission staff determines that the entity's EOP does not contain sufficient information to assess the entity's preparedness. Because the commission changes the requirement and circumstances under which an entity must provide a revised EOP, the commission deletes proposed paragraph (c)(4)(D).

The commission agrees with TPPA regarding flexibility and form of the EOP document, as discussed in greater detail under the General Comments header above.

ARM requested that entities that share a parent company be permitted to file a single EOP. ARM also requested further specificity in the rule for which sections apply to commonly owned entities and which apply to particular entities to "minimize administrative burdens and increase the efficiency" for reporting entities.

Commission Response

The commission agrees with ARM's recommendation to permit joint filings of an EOP in certain circumstances. The commission revises the rule to allow for joint filing of an EOP and other documents required by the rule separate from the EOP, as well as the combining of annexes in certain circumstances. A jointly filed EOP must clearly identify which portions of the plan apply to individual entities and fulfill the requirements of the rule for each entity. Each subsidiary entity must either be subject to the parent EOP or have its own standalone plan.

The commission also amends paragraph (c)(1) to explicitly indicate that each individual entity is responsible for its obligations under the adopted rule and further states that an entity filing a joint EOP or joint document separate from the EOP is also responsible for the contents of a joint filing in addition to the individual entity. Therefore, if a joint EOP or joint documents are deficient with regards to a specific individual entity, the filing entity and the specific individual entity are both responsible for the deficiencies. This requirement is intended to ensure joint EOPs and documents separate from the EOP are fully compliant with the rule and that the commission has recourse to address deficiencies in filings.

In conjunction with the amendment to paragraph (c)(1) described above, the commission adds subparagraphs (c)(1)(E) and (c)(1)(F) to permit joint filing of an EOP and documents separate from an EOP by an entity that has control over other entities. Such joint filings would satisfy the filing obligations required under paragraph (c)(1). The commission refrains from specifically defining "control" as the term in this context is best left to its plain meaning to maximize flexibility for entities in filing and compiling required documents and for the commission in reviewing and requiring updates under the rule. The commission also adds subparagraph (c)(1)(G) which permits an entity that must file similar annexes under subsection (e) for different facility types to file a combined annex as part of its EOP. The commission also adds subparagraph (c)(3)(F) which mirrors the requirements of subparagraphs (c)(1)(E), (c)(1)(F), and (c)(1)(G) for updated filings and combined annexes.

ETEC expressed concern over the reporting period in the after-action report because for "an event starting on December 31, for example, [to] be included in the February 15 filing" entities would not have enough time to assess a major event in such a short period. Thus, ETEC recommended changing the reporting period to address events that occurred during the twelve months prior to October of the previous year. In the alternative, ETEC suggested moving the February 15 deadline to April 1 to cover events that occurred during the previous calendar year.

Commission Response

The commission declines to change the rule based on ETEC's comment. In ETEC's hypothetical, if an event begins on December 31, the entity will not have revised the plan as a result of that event prior to the start of the next calendar year. So, under adopted

paragraph (c)(3)(A), if an entity makes a material change to its plan in the previous calendar year, it must file with the commission an executive summary describing the changes made, updating any references to specific sections and page numbers that correspond with the rule's minimum requirements; file with the commission its complete, revised plan with confidential portions removed; and submit the revised, unredacted plan to ERCOT by March 15.

TEC noted that the commission has limited jurisdiction over retail electric distribution cooperatives that do not operate a transmission facility or generation resource. Therefore, commission staff's authority in the rule to review and require changes should exclude retail electric distribution cooperatives. Similarly the requirement for drills and other operational standards should be excluded. Alternatively, the rule should be modified to report-only requirements for such organizations.

Commission Response

The commission disagrees with TEC's analysis of the commission's jurisdiction. Although PURA §41.001 states that with regards to the regulation of electric cooperatives, the provisions of Chapter 41 control over any other provision of Tex. Util Code, Title II, the statutory authority for this rule comes from Tex. Util. Code §186.007, which is not in Tex. Util. Code, Title II. Tex. Util. Code §186.007 (a-1) explicitly applies to electric cooperatives.

Tex. Util. Code §186.007 requires the commission to evaluate the preparedness of the industry to respond to emergencies, and the information required under this section is

required for this evaluation. For example, the commission requires each entity listed under adopted subsection (a) to conduct a drill as a means to self-evaluate its own level of preparedness, the results of which are reflected in material changes to the EOP filed with the commission.

SPS commented that the filed version of an EOP should be a summary version with the removal of confidential and security sensitive information.

In accordance with the concerns shared under heading(c)(1)(A), Oncor and TNMP provided draft language for paragraph (c)(1). Oncor's proposed language required an entity to publicly file an EOP in its entirety with confidential portions redacted or removed within 90 days of rule adoption and otherwise make available a complete unredacted copy of the EOP available to the commission for inspection in Austin. TNMP provided similar proposed language but instead required a comprehensive summary to be filed publicly, rather than an EOP in its entirety with confidential portions redacted or removed.

ARM commented that requiring entities to file unredacted EOPs in their entirety to both the commission and ERCOT as required under proposed subparagraphs (c)(1)(A) and (c)(1)(B) respectively is needlessly duplicative. Instead, ARM recommended requiring parties to file a complete unredacted EOP with ERCOT and a redacted public EOP with the commission to ensure preparedness and rule compliance without the burden of duplicative reporting requirements.

Commission Response

The commission agrees with many of the concerns expressed by commenters above and changes the rule to require an entity to submit to ERCOT its complete, unredacted plan; file with the commission an executive summary describing the changes made, updating any references to specific sections and page numbers that correspond with the rule's minimum requirements; and file with the commission its complete, revised plan with confidential portions removed.

Proposed §25.53(c)(1)(A) – Filing with the commission

AEP, CenterPoint, EPE, LCRA, Oncor, TNMP, SPS, TCPA, and Entergy opposed the inclusion of subparagraph (c)(1)(A) in the proposed rule due to confidentiality concerns related to the public filing of an unredacted EOP. SPS, TPPA and TNMP argued that the proposed rule conflicts with statutory language in Tex. Util. Code §186.007 which states "the plan shall be provided to the commission in a redacted form for public inspection with the confidential portions removed. An entity within the ERCOT power region shall provide the entity's plan to ERCOT in its entirety." CenterPoint, AEP, EPE, Oncor, Entergy, SPS, and CenterPoint each argued that, despite being filed confidentially, the information risked being disclosed under the Texas Public Information Act (TPIA).

Entergy and SPS each contended that requesting a TPIA exemption is costly, burdensome, and requires action on short notice. Entergy argued that a utility should not be forced to defend an exemption from disclosing EOP customers that may harm customers. SPS argued that these

exemption requests involved highly technical matters which the Attorney General and the courts may not be able to fully appreciate.

EPE, Oncor, SPS, and TCPA argued that EOPs contain information that, if disclosed, could be used by those planning an attack on critical infrastructure. TCPA cautioned that "public transparency must be tempered with securing sensitive or critical information regarding a utility's electric system." Oncor and EPE argued that portions of an EOP are designated as Critical Energy/Electric Infrastructure Information by the Federal Energy Regulatory Commission, and that the proposed rule might conflict with federal law.

CenterPoint, LCRA, and TCPA each recommended the commission revise the rule to ensure that any redacted information that was required to be filed was protected, to the maximum extent possible, from disclosure under the TPIA. CenterPoint argued that the "cyber security annex" and "physical security incident annex" is covered by TPIA §552.101's confidential information exception to the public information disclosure requirement under TPIA §552.021. CenterPoint provided draft language for proposed subparagraph (c)(1)(A) to specify that an unredacted EOP in its entirety must be filed confidentially under commission rule §22.71(d) (relating to Filing of Pleadings, Documents, and Other Materials), and, since it contains information related to critical infrastructure under Tex. Gov't Code §421.001(2), is therefore exempt from public disclosure under the TPIA. Alternatively, LCRA requested that the commission modify proposed paragraph (c)(1)(A) by adding "The redacted portions of the EOP are considered confidential information and are excepted from public disclosure." to the end of the provision. TCPA proposed that

unredacted EOPs should be submitted to ERCOT rather than the commission and that these EOPs should be designated as "protected information" under §25.362 (relating to ERCOT Governance) and ERCOT Nodal Protocols.

EPE, Oncor, TNMP, SPS, and AEP recommended that filing a comprehensive summary of the EOP be considered an acceptable substitute for filing full unredacted EOPs with the commission. SPS and EPE noted that this was consistent with existing §25.53(b), which allows a utility to submit either an entire EOP or a comprehensive summary. EPE also requested an explanation of the additional benefit gained by not allowing a comprehensive summary in lieu of a submission of a complete EOP. EPE further stated that if the commission requires the filing of entire EOPs, instead of comprehensive summaries, additional time would be needed to comply, as combining procedures into one comprehensive document will be time consuming.

TPPA. AEP, Oncor, and TCPA proposed that, as an alternative to requiring an unredacted copy to be filed with the commission, for portions of a plan that are designated as confidential, entities be required to provide the unredacted plan for inspection. TPPA recommended in-camera inspection by the commission. AEP recommended inspection by commission staff at the entity's main office. Oncor recommended "a location in Austin."

Commission Response

The commission agrees with commenter concerns regarding the importance of protecting the confidentiality of sensitive information contained in EOPs. The commission modifies the rule to require entities to file with the commission an executive summary that, among other

things, describes the contents and policies contained in the EOP. Entities must also file a complete copy of its EOP with all confidential portions removed and make its unredacted EOP available in its entirety to commission staff on request at a location designated by commission staff. Additionally, an entity with operations within the ERCOT power region must submit its unredacted EOP in its entirety to ERCOT, and ERCOT must designate the unredacted EOP as Protected Information under the ERCOT Protocols.

Proposed §25.53(c)(1)(B) – Filing with ERCOT

Proposed subparagraph (c)(1)(B) requires an entity operating within the ERCOT power region to file an unredacted EOP in its entirety with ERCOT.

CenterPoint, LCRA and TNMP opposed the inclusion of proposed subparagraph (c)(1)(B) unless justification is provided for ERCOT to review other market participants' EOPs and to prevent conflict between commission and ERCOT rules. TNMP also claimed that proposed subparagraph (c)(1)(B) is duplicative because "ERCOT Nodal Operating Guide 3.7(6) already requires a Transmission Owner to submit to ERCOT by each February 15, its emergency operations plan to mitigate operating emergencies." CenterPoint offered revised language for proposed subparagraph (c)(1)(B) to reflect that filed unredacted EOPs with ERCOT are protected information in accordance with the ERCOT Nodal Protocols. CenterPoint provided draft language adding "and ERCOT shall designate and treat such unredacted EOPs as Protected Information under section 1.3 of the ERCOT Nodal Protocols" to the end of proposed subparagraph (c)(1)(B).

Commission Response

The commission disagrees with CenterPoint, TCPA, and TNMP's recommendation to delete proposed paragraph (c)(1)(B). Tex. Util. Code §186.007(f) requires an entity within the ERCOT power region to provide its plan to ERCOT in its entirety. The commission agrees with CenterPoint's recommendation to add language regarding the confidentiality of plans filed with ERCOT and adopts paragraph (c)(1)(C) accordingly.

Proposed §25.53(c)(1)(C) – After-action report

Proposed subparagraph (c)(1)(C) requires an entity, beginning in 2023, to include in its annual EOP, for each incident in the prior calendar year that required the entity to activate its EOP, a summary after-action report that includes lessons learned and an outline of changes the entity made to the EOP as a result of the incident.

TPPA, AEP, LCRA, Oncor, TNMP, Enbridge, and TCPA opposed the inclusion of subparagraph (c)(1)(C) and recommended the provision be deleted.

TPPA contended that requiring an entity to provide an outline of changes to its EOP after an emergency event is better covered by proposed subparagraph (c)(4)(C), requiring a summary of lessons learned, is best accomplished by briefing the commission directly, and a set of after-action reports could form a blueprint for a bad actor and otherwise provide no benefit to the commission. Similar to TPPA, AEP and LCRA recommended deleting proposed subparagraph (c)(1)(C) and moving the proposed requirement to another section. LCRA specifically recommended moving proposed subparagraph (c)(1)(C) to proposed subparagraph (c)(4)(C).

Oncor and TNMP opposed the inclusion of subparagraph (c)(1)(C) in the proposed rule if the term "emergency" is interpreted to include more than "system emergencies" because the requirement would be administratively burdensome to implement. Otherwise, if the term "emergency" is not interpreted in that manner, then Oncor and TNMP do not oppose the rule requirement. Enbridge expressed concern for the "lessons learned" requirement of proposed subparagraph (c)(1)(C) as such information is "highly commercially sensitive" and would result in harm to the entity and would inhibit an entity's ability to earnestly analyze its own responsiveness to emergency events.

TCPA opposed the requirements under proposed subparagraph (c)(1)(C) and recommended it be deleted. Because there are several incidents every year in which an entity uses procedures from its EOP which do not result in material information to report and SB3 does not require information described in this provision, TCPA stated that the requirement to file updated EOPs "will adequately address the issue that the PFP is signaling in proposed subparagraph (c)(1)(C)." Further, TCPA explained that requiring entities to file after-action reports after every incident, along with the other requirements, would be burdensome. If the commission is to keep such requirements TCPA requested that the rule be changed to only require a summary report of each type of emergency including lessons learned and any resulting EOP changes instead of a report per incident.

Commission Response

In responses to multiple commenters' suggestions, the commission deletes the after-action reporting requirement under (c)(1)(C) and replaces it with adopted paragraphs (c)(3)(A) and (c)(3)(B). Under adopted paragraph (c)(3)(A), if an entity has made a material change to its

plan in the previous calendar year as the result of an activation, the entity must make a filing by March 15. This filing must include an executive summary that describes the changes made and updates any references to specific sections and page numbers that correspond with the rule's minimum requirements and the complete, revised plan with confidential portions removed. The entity must also submit to ERCOT the revised, unredacted plan. If an entity did not revise its emergency operations plan in the previous calendar year as a result of an activation of its plan, the entity must file an attestation that the plan has not changed, updates to the list of emergency contacts, and the affidavit required under subsection (c)(4)(C). An entity is also required to provide an after-action report upon request, as detailed in adopted subsection (g).

ETEC, AEP, SPS, and ARM recommended changes to proposed paragraph (c)(1)(C) if the commission does not adopt their proposals to delete the provision.

ETEC appreciated the need for the commission to have information from utilities such as after-action reports, mitigation plans, and affidavits regarding emergency events but was concerned that requiring entities to file these items with an EOP as proposed may clutter and reduce the effectiveness of the EOP. In ETEC's view, such reports do not serve the objective of an EOP to guide personnel during an emergency. Therefore, ETEC requested that proposed subparagraph (c)(1)(C) be amended to allow separate filings for EOPs and after-action reports distinct from EOP filings. ETEC remarked that an EOP's key purposes are "assignment of authority during an emergency, and clear organizational relationships" and therefore extraneous information should be excluded.

EPEC and ARM expressed concern that requiring an after-action report after every incident would be overly broad. EPEC proposed changing the after-action reporting requirement to only after significant incidents, such as after "emergencies" as defined in proposed subparagraph (b)(3). ARM recommended changing the report required under proposed subparagraph (c)(1)(C) to only require a general overview of the prior year's activity.

AEP and SPS suggested narrowing the circumstances requiring an after-action report. AEP explained that sometimes their EOP is activated in response to a weather event that is not unusual or extreme and such a case would not "necessarily raise novel issues warranting a review and report of the event." Because of this, AEP recommended that after-action reports should only apply to incidents when an entity activates its EOP in response to an official emergency declaration by local state, or federal government, ERCOT, or a reliability coordinator. SPS recommended changing the language of proposed subparagraph (c)(1)(C) from "incident" to "emergency" and also recommended amended language so EOP summaries may be filed in lieu of an entire unredacted EOP. SPS explained that rule language should be limited to emergency events as declared by appropriate governmental and regional coordinator authorities.

ARM recommended adding the phrase "if any" in the rule to clarify that an after-action report is only required if an incident occurred during the prior year.

Commission Response

The commission agrees with the concerns addressed by commenters and removes proposed paragraph (c)(1)(C) from the rule. However, an entity will continue to be required to provide an after-action report on request, as detailed in adopted subsection (g).

Consistent with its general recommendations for the proposed rule, OPUC requested that costs incurred by an entity implementing its EOP in response to a prior incident be included as part of the reporting requirement under proposed subparagraph (c)(1)(C).

Commission Response

The commission declines to adopt OPUC's proposed rule language. The monetary cost of EOP implementation does not bear on the intention of the rule to ensure emergency preparedness of entities to protect life, property, and continuity of service.

Proposed §25.53(c)(3) – New entity EOPs

Proposed paragraph (c)(3) requires a person seeking registration as a PGC or certification as a REP to file an EOP at the time of its application for registration or certification, and, if operating in the ERCOT power region, to file the EOP with ERCOT within 10 days of approval.

AEP observed that there is no paragraph (c)(2) and recommended renumbering the paragraphs in subsection (c).

Commission Response

The proposed language filed on the commission's website contained a numbering error that was corrected for the version published in the Texas Register. For clarity, references to the proposal in this preamble use the numbering from the version of the proposed rule filed on the commission's website. The commission has corrected this numbering issue for the adopted rule.

CenterPoint provided language for proposed subparagraph (c)(1)(C), relisted in CenterPoint's redline as paragraph (c)(2). CenterPoint's proposed language would require an entity to file a summary after-action report and an affidavit affirming that the entity's currently filed EOP includes all material updates and changes annually on June 1, among other changes.

Commission Response

As noted under heading (c)(1), the commission changes the annual reporting deadline to March 15 in order to address commenters' concerns while still allowing the commission sufficient time to analyze the plans and prepare its report to the Legislature. The commission declines to reorganize paragraph (c)(1)(C) into new paragraph (c)(2) as recommended by CenterPoint.

CenterPoint recommended adding the phrase "after June 1, 2022" to clarify that this requirement only applied to persons who seek certification or registration after June 1, 2022. Because such persons would not be considered entities on June 1, 2022, CenterPoint explained that these persons cannot be required to file EOPs by June 1, 2022.

Commission Response

The commission disagrees with CenterPoint. The intention of the rule is to ensure all entities create and maintain an EOP. Accordingly, adopted paragraph (c)(2) explicitly the requires that to register as a PGC or certify as a REP, an applicant must submit to ERCOT its unredacted EOP and file with the commission an executive summary and complete copy of the plan with the confidential portions removed.

Proposed §25.53(c)(4) – Updated filings

Proposed paragraph (c)(4) requires an entity to file an updated EOP with the commission within 30 days under the circumstances detailed in proposed subparagraphs (c)(4)(A) through (c)(4)(D), which will be discussed in more detail under the corresponding headers below.

CenterPoint, LCRA, TEC, TPPA, TNMP and SPS opposed the requirement to refile EOPs under proposed paragraph (c)(4). CenterPoint requested that an entity only be required to update its EOP within 30 days after the entity makes a significant change to its currently filed EOP. LCRA agreed that it should take a significant change to an EOP to require an entity to refile it with the commission, including, as an alternative to providing after action reports as a part of an EOP, when a significant change has been made to an EOP in response to an after-action report. TEC recommended removing the re-filing requirement altogether or alternatively excluding cooperatives from the refiling requirements.

Commission Response

The commission makes several changes to adopted paragraph (c)(3) to address the concerns raised by comments to proposed paragraph (c)(4) concerning when an entity must refile its

EOP. First, the commission retains the requirement that an entity must update its EOP if commission staff determines that the entity's EOP on file does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency as stated in adopted (c)(3)(F). Next, the commission removes the remaining proposed updated and annual filing requirements from the rule, as discussed below, in favor of requiring a single annual filing under adopted (c)(3). An entity must file a complete EOP for this annual filing if it made a change to its EOP in the previous calendar year that would materially affect the way the entity would respond to an emergency. Such an entity must file with the commission an executive summary and a complete, revised copy of the plan with the confidential portions removed, and submit to ERCOT an unredacted revised EOP in its entirety. An entity that has not made a significant change to its EOP in the previous calendar year must attest to the same and file an updated affidavit and contact information.

To maintain consistency with the initial filing requirements under adopted paragraph (c)(1) the commission adds several corresponding provisions for updated filings under (c)(3) including adopted paragraph (c)(3)(D) regarding the confidentiality of unredacted revised plans submitted to ERCOT and (c)(3)(E) regarding the requirement to allow commission staff to review a revised copy of an entity's EOP in its entirety at a location designated by commission staff.

The commission declines to revise the rule to except electric cooperatives from the filing requirements under this section for reasons described under the General Comments heading.

Proposed §25.53(c)(4)(A) – Insufficient information

Proposed subparagraph (c)(4)(A) requires an entity to file an updated EOP if commission staff determines the entity's EOP does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency.

Enbridge recommended the deletion of proposed subparagraph (c)(4)(A) because it provides the commission open-ended discretion "to enforce a performance standard during an emergency, which is not within the scope of this Project."

Commission Response

The commission disagrees with Enbridge that requiring an entity to update an EOP that does not contain sufficient information provides the commission open-ended discretion to "enforce a performance standard" during an emergency. Complete information is required for the commission to assess the ability of the electric grid to withstand extreme weather events in the upcoming year as required by statute. Adopted (c)(4)(A) does not require an entity to file an updated EOP based upon an assessment of its performance under the EOP or the particulars of its contents; only whether it provides information addressing the required topics.

AEP, Enbridge, TCPA, and SPS expressed concern over delegating to commission staff the sole discretion of requiring an entity update its EOP under proposed subparagraph (c)(4)(A). TPPA and CenterPoint expressed concern that the requirements under proposed paragraph (c)(4) do not align

with the statutory text of Tex. Util. Code §186.007(b) which grants the authority to require entities to file updated EOPs with the commission and not its staff.

TCPA opposed the inclusion of subparagraph (c)(4)(A) in the proposed rule, stating that "required updates to EOPs should track statutory requirements requiring a commission order" to comply with Tex. Util. Code §186.007(b). CenterPoint asserted that commission staff "may advise an entity to make an update to its EOP," but if the entity disagrees, commission staff's only recourse would be to initiate a show-cause hearing or file a show-cause motion, so the commission can adjudicate. CenterPoint asserted commission staff does not have the "unilateral authority to force an entity to change its EOP," due to the entity's due process rights. Accordingly, CenterPoint recommended changing the language of proposed subparagraph (c)(4)(A) to include the phrase "within the time period specified in a commission order" and to reflect that any determination is to be made by the commission and not commission staff. Similarly, AEP recommended adding the qualifier "reasonably" to the rule to allow the option to have the commission make a final determination if parties cannot reach an agreement.

TPPA stated that it appreciated the need to informally communicate and coordinate with commission staff but expressed concern that the communications covered under proposed paragraph (c)(4) could "result in simultaneous, conflicting instructions from multiple staffers" and due process concerns. TPPA recommended amending proposed paragraph (c)(4) to strike the term "staff" from the provision and add a requirement to provide notice and hearing to an entity for a commission determination requiring an entity to update its EOP. TPPA stressed that developing

an EOP is a significant endeavor made more demanding for MOUs due to their direct connection to local government.

Commission Response

The commission does not share TCPA's, CenterPoint's, TPPA's and AEP's concerns regarding allowing commission staff to request updated EOPs. An entity will not be required to *change* its operations via these provisions, merely update its documentation if it is incomplete. Moreover, there are no due process issues to consider. The commission does not operate by order alone nor does the statute require an order in this case. This is but one of many instances, such as responding to an informal complaint, where an entity is required to follow direction from commission staff to comply with a rule, and just like in those other instances, the entity cannot be issued a penalty or other punitive measure for noncompliance without an opportunity for a hearing in front of the commission.

TPPA's suggestion that the only way to avoid "simultaneous, conflicting instructions from multiple staffers" is to put the question before the commissioners ignores the fact that the organization of the commission is transparent and readily accessible on the commission's website. In the unlikely event that an entity believes that it is receiving conflicting or unreasonable requests to file an updated EOP from commission staff, it can seek clarity by contacting the executive director's office or another member of the commission's leadership team.

SPS and TNMP recommended modifying proposed subparagraph (c)(4)(A) to allow entities to file a comprehensive detailed summary of its updated EOP instead of filing an updated EOP. TNMP

also recommended making a complete unredacted copy of the EOP available to the commission for inspection.

Commission Response

The commission declines to make the changes suggested by SPS and TNMP. An entity is not permitted to submit a comprehensive EOP summary if required by commission staff to update its EOP. Under Tex. Util. Code §186.007(f), a redacted EOP must be submitted to the commission with the confidential information removed. Moreover, the commission declines to allow an entity to file an updated summary of its EOP, because the summary may not adequately or accurately capture the needed information. To analyze EOPs and assess the ability of the electric utility industry to provide adequate service during an emergency, the commission requires a complete picture of an entity's plans to respond to and during an emergency. This requirement is not unduly burdensome as it only requires an entity to update the information, not necessarily submit an entire plan. However, entities within the ERCOT power region must submit this updated information in unredacted form to ERCOT.

TEC proposed changing the review and feedback process in this provision to exclude electric cooperatives that do not operate a transmission facility or generation resource. However, TEC explained that updates due to material changes would still be required.

Commission Response

The commission declines to change the rule as suggested by TEC for the reasons discussed under the General Comments heading.

Proposed §25.53(c)(4)(B) – Commission staff feedback

Proposed subparagraph (c)(4)(B) requires an entity to file an updated EOP in response to feedback provided from commission staff.

TNMP, CenterPoint, TEC, Oncor, AEP, and SPS opposed the inclusion of proposed subparagraph (c)(4)(B) in the proposed rule as any update required is already addressed by proposed subparagraph (c)(4)(A). TNMP recommended subparagraph (c)(4)(B) be revised to permit filing of a comprehensive detailed summary of its EOP in lieu of a completed unredacted copy but permit the unredacted copy to be available to the commission for inspection.

CenterPoint recommended deletion of proposed subparagraph (c)(4)(B) because it is vague, ambiguous, and duplicative of requirements already included in proposed subparagraph (c)(4)(C). Further, CenterPoint commented that commission staff "does not have the unilateral authority to force an entity to change its EOP" as an entity has due process rights.

TEC repeated its recommended edits for proposed subparagraph (c)(4)(A) for proposed subparagraph (c)(4)(B). SPS recommended the deletion of this provision as it is subsumed by their edited proposed subparagraph (c)(4)(A). Further, SPS commented that proposed subparagraph (c)(4)(B) is concerning as it provides no review process for the affected entities. Enbridge expressed concern over the inclusion of subparagraph (c)(4)(B) in the proposed rule because it is overly broad and does not provide space for an entity's knowledge regarding their own asset, personnel, and safety programs. Consistent with its opposition to subparagraph (c)(4)(B), TCPA

opposed the inclusion of subparagraph (c)(4)(B) in the proposed rule, stating that "required updates to EOPs should track statutory requirements requiring a commission order" in order to comply with Tex. Util. Code §186.007(b).

Commission Response

The commission agrees with commenters that proposed subparagraph (c)(4)(B) is largely duplicative of proposed subparagraph (c)(4)(A) and deletes the requirement in the adopted rule.

Proposed §25.53(c)(4)(C) – Significant changes

Proposed subparagraph (c)(4)(C) requires an entity file an updated EOP if the entity makes a significant change to its EOP no later than 30 days after the change takes effect. A significant change to an EOP includes a change that has a material impact on how the entity would respond to an emergency.

Oncor, CenterPoint, and SPS recommended modifications of proposed subparagraph (c)(4)(C). Oncor recommended modifying the rule so entities have the option to file "a comprehensive detailed summary of its updated EOP and make a complete unredacted copy of the updated EOP available to the commission for inspection" instead of filing a complete EOP. CenterPoint recommended that the confidentiality language it recommended apply to paragraph (c)(1) also apply to updated filings.

SPS opposed the requirement under proposed subparagraph (c)(4)(C) to refile an EOP when significant changes are made to the plan. SPS supported the commission's goal to increase transparency, however expressed concern that the requirement to file, or refile, updated plans when significant changes are made would be needlessly burdensome to entities as well as the commission and would increase the risk of exposure of confidential information. Further, SPS commented that this requirement would "distract from the core objectives of this process to address significant, material threats to service reliability." SPS commented that the requirement to re-file EOPs with all its required annexes to be an "unduly onerous requirement" for a change to one portion of the EOP. Instead, SPS recommended requiring entities to file a comprehensive summary of their EOP in an initial filing 90 days after rule publication and an update to the summary within 30 days of a significant change to the EOP. Further, SPS also recommended requiring an executive outline detailing the changes to the EOP with the EOP summary.

Commission Response

The commission agrees with SPS that this requirement is burdensome and removes the requirement accordingly.

LCRA asked the commission to clarify whether a change in the list of employees is considered a "significant change," as there could be "employee turnover, job changes, [or] title changes…[that] could make this requirement extremely burdensome."

Consistent with its recommendations for proposed subsection (c), SPS recommended adding the word "summary" after each occurrence of the term "EOP." Similarly, TNMP suggested modifying proposed subparagraph (c)(4)(C) to provide for the filing of a comprehensive EOP summary.

Commission Response

The concerns of LCRA, SPS, and TNMP are moot as this requirement has been removed from the rule.

Proposed §25.53(c)(4)(D) – Updated EOP filings with ERCOT

Proposed subparagraph (c)(4)(D) requires an entity with operations within the ERCOT power region to submit its updated EOP under proposed subparagraphs (c)(4)(A), (c)(4)(B), and (c)(4)(C) to ERCOT within 30 days of filing the updated EOP with the commission.

TNMP opposed proposed subparagraph (c)(4)(D) and recommended its deletion because Nodal Operating Guide 3.7(6) requires entities to provide the same information to ERCOT. LCRA suggested deletion of proposed subparagraph (c)(4)(D) as LCRA believes current ERCOT Protocols "should continue to govern submissions of EOPs to ERCOT." Currently, as LCRA pointed out, the ERCOT Nodal Operating Guide requires Transmission Operators to submit EOPs to ERCOT, as required by NERC, since ERCOT is considered the Balancing Authority and Reliability Coordinator for the ERCOT region. LCRA requested clarification as to why ERCOT would need to review other types of entities' EOPs.

Commission Response

The commission disagrees with LCRA's and TNMP's assessment that ERCOT Nodal Operating Guide §3.7(6) satisfies the requirements of Tex. Util. Code §186.007 and declines to make the requested change to the rule. Nodal Operating Guide §3.7(6) only applies to Transmission Operators operating in the ERCOT power region. Tex. Util. Code §186.007 and this rule apply to entities other than Transmission Operators operating in the ERCOT power region.

Commission Response

Tex. Util. Code §186.007(f) requires an entity within the ERCOT power region to provide its EOP to ERCOT in its entirety. As such, the commission disagrees with LCRA's assessment and declines to change the rule.

CenterPoint recommended updated EOP filings required under proposed (c)(4)(D) be subject to Protected Information requirements.

Commission Response

The commission agrees that any submission to ERCOT of an updated EOP is subject to protected information requirements. The requirement to submit to ERCOT unredacted plans is codified in adopted (c)(3)(A)(iii). The requirement that updated EOPs are subject to Protected Information requirements is codified as adopted (c)(3)(D).

Proposed §25.53(c)(5) – ERCOT EOP

Proposed paragraph (c)(5) requires ERCOT to maintain a current EOP in its entirety, consistent with the requirements of proposed subsection (c) and available for review by the commission or the commission's designee, notwithstanding the other requirements of proposed subsection (c).

TNMP requested deletion of proposed paragraph (c)(5) as it is redundant. Specifically, TNMP indicated that Nodal Operating Guide 3.7(6) already requires similar information to be provided to ERCOT.

Commission Response

Adopted paragraph (c)(5) is intended to require ERCOT to develop and maintain its own EOP consistent with the requirements of this rule. The commission amends the rule for clarity consistent with Oncor's recommendation discussed below under this heading.

TPPA recommended that proposed paragraph (c)(5) be amended to require ERCOT to securely provide its unredacted EOP filed with the commission to market participants because ERCOT has access to the unredacted EOPs of market participants under proposed subparagraph (c)(4)(D). TPPA also suggested that a redacted version of ERCOT's EOP be published on its Market Information System or filed with the commission for public inspection.

Commission Response

The commission declines to change the rule according to TPPA's recommendations. Simply because an entity submitted its EOP to ERCOT does not entitle that entity or make it useful

for that entity to receive a copy of ERCOT's EOP. ERCOT's procedures governing its interactions with market participants are enumerated in great length through the Nodal Protocols and the various Market Guides. All market participants have access to these documents and are bound by agreement with ERCOT to be familiar with the contents thereof.

Oncor recommended replacing "a current EOP" with "its own current EOP" in proposed paragraph (c)(5) to more clearly indicate that ERCOT must create and maintain an EOP for itself.

Commission Response

The commission agrees with Oncor's recommendation and amends the rule accordingly.

Proposed §25.53(d) – Required EOP Information

Proposed subsection (d) requires an entity to include in its EOP common operational functions for all emergencies and annexes specific to certain types of emergencies listed under subsection (e). An entity that claims a provision of subsection (d) does not apply to it must include in its EOP filing to the commission the reasons for which the specific provision does not apply.

EPE, TCPA, ARM, LCRA, Oncor, and GVEC opposed the requirement of proposed subsection (d) to require an entity to consolidate its EOP in a single document. Consistent with its recommendations for proposed subsections (e) and (f), EPEC recommended the commission not require a consolidated EOP under proposed subsection (d) and instead permit a summary to be filed for the EOP and any required annexes.

Commission Response

As noted previously, the rule does not require an entity to adhere to a specific format for its EOP. The entire set of plans designed to prepare for an entity's response to an emergency must be filed with the commission with the confidential portions removed. An executive summary of the plan is also required. As such, the commission declines to change the rule based on the recommendations of EPE, TCPA, ARM, LCRA, Oncor, and GVEC. An entity is required to file a document which contains the minimum required information in whatever format best suits the entity.

Consistent with its recommendations for the definition of "emergency" under proposed paragraph (b)(3), TCPA further recommended that an EOP's scope be limited to "reasonably foreseeable" emergencies under proposed subsection (d). ARM also recommended changing the language "every type of emergency" in proposed subsection (d) to "every reasonably foreseeable type of emergency" while Enbridge suggested the same language be replaced with "most common emergencies," so as to differentiate between "emergency preparedness and the specific annexes." Oncor and TNMP stated the phrase "common operational functions that can be used for every type of emergency" does not appear in the existing version of §25.53 and is thus unclear in how it is used in proposed subsection (d). Oncor and TNMP emphasized that in order for an EOP to be effective, it must be designed to address "system emergencies" as defined in §25.5(128), not "every type of emergency" which may involve only "common operational functions" and not activation of the EOP.

Commission Response

The rule is designed to ensure that entities have considered and adequately prepared for emergency response. This preparation necessarily requires the development of operational functions that come into play regardless of emergency type and of procedures that are specific to particular types of emergencies. The commission clarifies the language of (d) accordingly.

The commission declines to adopt the other recommendations made by commenters, as this clarification should substantively address the underlying concerns. Furthermore, the commission's changes to the definition of "emergency" under adopted paragraph (b)(3) partially address TCPA, ARM, and Enbridge's recommendations. In response to Oncor and TNMP's comments, the commission acknowledges the difference between "system emergency" as defined under §25.5(128) and the adopted rule's definition of "emergency" under paragraph (b)(3). However, the adopted rule extends the definition of emergency to include hazards and threats. Oncor and TNMP's concerns are also addressed under heading (b)(3) defining "emergency" and the commission's revision of the same.

AEP requested the commission clarify the word "outline" in subsection (d) due to the ambiguity in what is meant for an entity to "outline" its responses to the types of emergencies the annexes are required to address under proposed subsection (e). Specifically, AEP noted that proposed paragraph (c)(1)(A) requires a utility to file an "unredacted EOP in its entirety" and requested the commission determine whether the term "outline" is consistent with or differs from that requirement.

Commission Response

The commission has amended subparagraph (c)(1)(A) to permit a summary of the EOP and a complete revised copy of the plan with the confidential portions removed to be filed with the commission in lieu of a full, unredacted version. This revision addresses AEP's request for clarification of the same in relation to what is meant by the term "outline" in subparagraph (d). The commission declines to define the term "outline" as entities are best situated to determine the practices and procedures relevant to its industry, locale, and customers when returning to normal operations after disruptions caused by an incident. The intent of the rule is not to prescribe to each entity the manner in which it responds to an emergency but ensure that entities have considered and adequately prepared for emergency response via implementation of standard minimum plan content.

LCRA urged the commission to avoid overly prescribing EOP informational requirements in proposed subsection (d). Specifically, LCRA expressed concern that the proposed subsection may undermine the efficiency and effectiveness of an "integrated, enterprise-wide" approach to address emergency planning needs unique to the utility implanting the EOP.

Commission Response

The commission disagrees with LCRA's comments on subsection (d). The commission agrees that efficiency and effectiveness are important, however, emergency preparedness is equally important. The commission believes that the current language strikes a balance.

TPPA recommended that the requirements of paragraphs (d)(1), (d)(2), and (d)(4) regarding an approval and implementation section, record of distribution, and affidavit requirement, respectively, be a reporting requirement separate from the EOP itself. Otherwise, a cyclical timing issue in finalizing and distributing the EOP will result. GVEC made the same recommendation as TPPA in more general terms and also referenced the annexes required under subsection (e). GVEC elaborated that these additional requirements are not essential to a functioning EOP.

Commission Response

The commission agrees with TPPA and GVEC that the record of distribution required under proposed paragraph (d)(2), list of emergency contacts under proposed paragraph (d)(3), and affidavit required under proposed paragraph (d)(4) should be filed separately from the EOP. Furthermore, the commission moves the requirements of (d)(2), (d)(3), and (d)(4) into adopted paragraph (c)(4) as adopted subparagraphs (c)(4)(A), (c)(4)(B), and (c)(4)(C), respectively, and amends the requirements to permit these documents to be filed separate from the EOP. The commission declines to adopt TPPA and GVEC's recommendation that the approval and implementation section under (d)(1) should be filed separately from the EOP as it contains information necessary for an entity's emergency planning such as the EOP's scope and applicability. The commission substantively addresses its rationale for the inclusion of adopted paragraph (d)(1) under headings (d)(1)(B), (d)(1)(C), and (d)(1)(D).

CenterPoint asserted the best practice for updated EOPs would be to track each iteration of the document through version number or a similar system, such as a control number, rather than providing updated versions as considered in the proposed rule.

Commission Response

The commission agrees with CenterPoint that tracking EOP updates with a version number or some other system is more efficient than requiring the submission of each individual updated draft. The adopted rule does not require the submission of an updated draft after each significant change made to an entity's EOP.

Proposed §25.53(d)(1)(B) – Responsible Individuals

Proposed subparagraph (d)(1)(B) requires an approval and implementation section included in the EOP to list individuals responsible for maintaining, implementing, and revising the EOP.

SPS opposed the requirement of proposed subparagraph (d)(1)(B) and recommended it be deleted from the proposed rule. SPS stated the provision would be unduly burdensome to apply in practice due to employee turnover necessitating frequent changes to the EOP. ARM alternatively recommended that proposed subparagraph (d)(1)(B) permit identification of groups or teams responsible for EOP implementation activities which would alleviate the administrative burden of implementing the proposed subparagraph. TCPA argued that proposed paragraph (d)(1)(B) is improper in specifying individuals to be identified in maintenance, implementation, and editing the EOP when instead specifying groups, teams, or other sustainable reference will reduce unnecessary and wasteful efforts in keeping the EOP updated.

Commission Response

The commission declines to modify the rule based on the comments filed on this subparagraph. The identification of specific individuals who are accountable for modifying and implementing EOPs is important to assess the emergency preparedness of an entity. However, the commission agrees with commenters that the identification of individuals by name would be burdensome. The commission clarifies that an entity can comply with (d)(1)(B) by listing the titles or specific designations of individuals responsible for maintaining and implementing the EOP and those who can change the EOP, so long as the title or designation is specific enough to identify the specific holder of that title or designation at any time. The commission agrees that efficiency and effectiveness are important, however, emergency preparedness is equally important. The commission believes that the current language strikes a balance.

TLSC requested proposed subparagraph (d)(1)(B) be amended to specifically identify employees responsible for emergency planning concerning customers medically dependent on electricity.

Commission Response

The commission declines to modify the rule to require entities to specifically identify employees responsible for emergency planning concerning customers medically dependent upon electricity. The rule requires the identification of all individuals responsible for maintaining and implementing an entity's EOP. To the extent that this includes emergency planning for customers medically dependent on electricity these individuals must also be identified.

Proposed §25.53(d)(1)(C) – Revision control summary

Proposed subparagraph (d)(1)(C) requires an approval and implementation section included in the EOP to maintain a revision control summary that outlines changes made to an EOP and records the dates that changes are made.

ARM and TCPA opposed the inclusion of proposed subparagraph (d)(1)(C) because it is "unduly burdensome" and recommended it be deleted from the proposed rule. TCPA alternatively recommended revising proposed subparagraph (d)(1)(C) to require tracking only of "material" changes to the EOP.

Commission Response

The commission disagrees with ARM and TCPA that the requirement of proposed subparagraph (d)(1)(C) to provide a revision control summary is "unduly burdensome." The commission agrees with TCPA that "material" changes should be tracked in a revision control summary but declines to adopt language only requiring the tracking of "material" changes. It is conceivable that there are organizational, clerical, or formatting changes to an EOP that may later be revealed to be material in drills or implementation of the EOP. Furthermore, dates of revision and the substance of EOP changes are known to the entity and needed by the commission to ensure revision integrity.

CenterPoint recommended revising subparagraph (d)(1)(C) to only track changes to EOPs that are changed from the initial EOP filing required by proposed paragraph (c)(1).

Commission Response

The commission agrees with CenterPoint's recommendation and amends subparagraph (d)(1)(C) accordingly.

Proposed §25.53(d)(1)(D) – EOP date of adoption

Proposed subparagraph (d)(1)(D) requires an approval and implementation section included in the EOP to contain a dated statement indicating when the current EOP was adopted by the entity.

ARM recommended proposed subparagraph (d)(1)(D) be deleted as it is unnecessary because, in ARM's view, any newly issued EOP clearly supersedes a previous EOP. ARM asserted that since proposed subparagraph (d)(1)(E) already requires a dated statement of adoption indicating the EOP on file is the most recent and adopted EOP, subparagraph (d)(1)(E) should suffice for tracking changes to an EOP by the commission. CenterPoint provided draft language for proposed subparagraph (d)(1)(D) which consists of striking the word "dated" from the provision.

Commission Response

The commission disagrees with ARM and CenterPoint that the requirement of proposed subparagraph (d)(1)(D) to provide a dated statement that the current EOP supersedes previous EOPs is "unnecessary." In the interest of clarity, each EOP summary, full version with confidential portions removed, or unredacted full version must contain a dated statement that the current EOP supersedes previous EOPs.

Proposed §25.53(d)(1)(E) – Date of Approval

Proposed subparagraph (d)(1)(E) requires an approval and implementation section included in the EOP to provide the date the EOP was most recently approved by the entity.

CenterPoint recommended a clerical change adding the word "states" to the beginning of proposed subparagraph (d)(1)(E).

Commission Response

The commission agrees with CenterPoint's recommended change for subparagraph (d)(1)(D) and implements its recommended language.

Proposed §25.53(d)(2), §25.53(d)(2)(A), and §25.53(d)(2)(B) – Record of Distribution

Proposed paragraph (d)(2) requires an EOP to include a record of distribution that, under proposed subparagraphs (d)(2)(A) and (d)(2)(B), must include names and titles of persons in the entity's organization receiving the EOP, and a record of dates when the EOP is issued to the listed persons.

ARM, AEP, LCRA, and TEC opposed the requirements of subparagraph (d)(2), as proposed, as administratively burdensome due to employee turnover and volume concerns.

LCRA requested the commission revise proposed paragraph (d)(2) to permit an entity to "provide a record of employees with access to the EOP and the corresponding date when access was granted" provided the entity stores its EOP securely. AEP similarly recommended the list requirement be replaced with a description affirming the existence of distribution procedures to

ensure relevant employees receive the EOP. LCRA emphasized that the provision "should not be interpreted to require 'distribution' by email or other similar means, if that is not how the entity maintains and controls access to its EOP." LCRA also recommended the commission address whether updating the list of employees with access to the EOP in accordance with proposed paragraph (d)(2) constitutes a "significant change" requiring re-filing of the EOP with the commission under proposed subsection (c)(4)(C). LCRA commented that an update to the employee list should not be considered a "significant change" under proposed subparagraph (c)(4)(C), citing similar administrative burden concerns as SPS and ARM in their comments under subparagraph (d)(1)(B) regarding employee turnover.

Commission Response

The commission declines to change the rule to permit an entity to only provide a description of its distribution process, as recommended by AEP. The commission finds identification of specific individuals relevant to its analysis of the overall state of the industry's preparedness by demonstrating each entity's broad and relevant awareness of EOP procedures and accountability to those procedures. The high turnover rates cited by commenters only increases the value of the commission knowing that an entity is tracking who has access to the EOP and when.

In response to LCRA's comments, the commission declines to clarify what qualifies as "distribution" for the purposes of this paragraph. The entity should choose the most appropriate and efficient administrative process that ensures its relevant employees have access to its EOP and document the process accordingly.

As discussed under heading (c)(4), the commission has moved the record of distribution requirement of proposed paragraph (d)(2) into adopted paragraph (c)(4) for annual filings separate from an EOP, specifically as in adopted subparagraph (c)(4)(A). Therefore, LCRA's request for clarification does not need to be addressed further.

ARM, Enbridge, and SPS recommended proposed subparagraph (d)(2) be deleted. AEP also expressed concerns over preserving employee confidentiality for the proposed list. CenterPoint and Enbridge emphasized that each entity is unique in its business structure and operational models and that what should be considered important is that "the entity can confirm applicable personnel within its unique model have been trained."

CenterPoint provided draft language for proposed subparagraph (d)(2)(A) which would require entities to report persons who have access to the EOP or include a statement that the EOP was distributed, or made accessible, to all persons in the entity's organization. CenterPoint also recommended language for subparagraph (d)(2)(B) which amended the subparagraph to include dates of distribution or accessibility to the EOP.

ARM and AEP commented that the affidavit under paragraph (d)(4) satisfies the intended purpose of paragraph (d)(2), as paragraph (d)(4) requires a generalized affirmation from the entity's highest-ranking representative that relevant employees have been trained in accordance with and reviewed the entity's EOP. As an alternative, if the commission declines to delete proposed paragraph (d)(2), ARM recommended proposed paragraph (d)(2) be amended to be less

prescriptive. ARM specifically requested that the commission "at a minimum delete the requirement to list individuals receiving the EOP" as it would unnecessarily increase the volume, complexity, and cost of compliance in developing and implementing an EOP and that a table may not be an ideal format due to the same.

TEC recommended that the list required under proposed paragraph (d)(2) be limited to only management personnel who receive the EOP. TEC explained that this change would effectuate the same purpose of ensuring the EOP is distributed to the relevant individuals while making reporting the EOP to the commission easier to manage for entities.

Commission Response

The commission disagrees with ARM, Enbridge, AEP, TEC, SPS, and CenterPoint, as the list of personnel contemplated under paragraph (d)(2) is necessary for the commission to audit whether personnel responsible for certain EOP procedures have in fact received the required training relevant to such responsibilities. An entity that decides to limit the list of responsible people must nonetheless provide the list to the commission and ERCOT. However, to make compliance with this requirement less onerous for entities and better align the rule with its intended purposes, the commission modifies the rule to require the titles and names of persons in the entity's organization that have been provided and trained on the EOP. The commission further modifies the rule to require dates of distribution or accessibility, and training, as appropriate. An entity should interpret this requirement in a manner that best aligns with its EOP training and distribution practices, and provides the

commission with a comprehensive and detailed accounting of the distribution of its EOP to relevant personnel.

Proposed §25.53(d)(3)

Proposed paragraph (d)(3) requires an EOP to include a list of emergency contacts for the entity, including identification of single points of contact during an emergency.

LCRA asserted that the term "emergency contacts" and the request for "single points of contact during an emergency" in proposed paragraph (d)(3) is unclear due to the plural and singular usages of the term "contact." LCRA further expressed that it is also unclear whether the emergency contacts should be inclusive or separate from the single points of contact. Accordingly, LCRA requested that the commission revise proposed paragraph (d)(3) to be unambiguous and clarify the intention of requesting such information. LCRA requested clarification on whether submission to the commission for a representative, whose information is already on file with the commission, is different than the requested emergency contact in the proposed paragraph.

CenterPoint requested paragraph (d)(3) be deleted from the proposed rule and recommended the provision regarding submission of emergency contact information be moved to proposed subsection (g). Specifically, CenterPoint argued that including a list of emergency contacts in an EOP has no clear benefit for the reasons discussed in paragraph (d)(2) such as personnel turnover and business structure.

Commission Response

The intent of proposed paragraph (d)(3), adopted as subparagraph (c)(4)(B), is to ensure each entity to which this rule applies provides and maintains an accurate list of representatives the commission can contact during an emergency. The commission requires a list of emergency contacts, which includes specifically identified individuals who can immediately address urgent requests and questions from the commission during an emergency. Whether the entity identifies one or more individuals to serve this function is left to the entity to decide; however, the commission recommends an entity have at least one primary and one back-up contact identified. The commission modifies the rule accordingly.

The commission declines to allow an entity to rely solely on the contact information on file with the commission in its Market Directories because there has been a consistent pattern of entities failing to keep contact information current without a required annual update. Therefore, the adopted rule requires an updated emergency contact list with an entity's initial filing and with each annual update, as a supplement to the contact information contained in the commission's Market Directories. The commission clarifies that for purposes of this requirement an entity must include all emergency contacts that are relevant to the entity's EOP planning including representatives, if applicable. If an entity has multiple emergency contacts the entity should highlight and place at the top of the list, the entity's main emergency contact.

The commission agrees with CenterPoint that the emergency contact list should not be included in an entity's EOP and relocates the requirement to subparagraph (c)(4)(B), which contains documents that must be filed with an entity's EOP.

Entergy and SPS expressed concern that if the emergency contact information is available publicly, citizens may contact specific individuals while the emergency contact is working to address the emergency and that it risks listed emergency contacts becoming a potential target of a cyberattack. Entergy supported the intention of the proposed rule but requested that it be revised to provide the required emergency contact information in a redacted form for public filing and the unredacted form provided confidentially.

Commission Response

The commission agrees with Entergy and SPS that the list of emergency contacts can be filed confidentially.

TLSC proposed that paragraph (d)(3) include a general hotline activated during disaster or emergency situations, providing a single point of contact during emergencies for individuals who are medically dependent on electricity.

Commission Response

The commission declines to adopt TLSC's recommendation to amend proposed paragraph (d)(3) to require all entities to implement a general hotline activated during an emergency, because it is beyond the scope of this rulemaking to impose such a specific requirement. However, adopted paragraph (d)(2) does lay out requirements that entities include a communications plan, which for most entities includes a plan for communicating with the

public during an emergency. Nothing in the rule precludes an entity from voluntarily implementing a hotline to be activated during an emergency.

Proposed §25.53(d)(4) – Affidavit

Proposed paragraph (d)(4) requires an EOP to include an affidavit from the entity's highest-ranking representative, official, or officer with binding authority over the entity to affirm a number of features of the EOP which are discussed in greater detail under the subparagraphs below.

CenterPoint, TCPA, and ARM opposed the inclusion of paragraph (d)(4) in the proposed rule. Consistent with its recommendations for paragraph (c)(2) and subparagraphs (c)(2)(B), CenterPoint asserted that the affidavit required by proposed paragraph (d)(4) should not be included in the EOP but instead be an annual filing separate from the EOP. For the same reason, CenterPoint recommended deleting proposed paragraph (d)(4) in its entirety. ETEC claimed the affidavit required to be included in the EOP under proposed paragraph (d)(4) is only required by the commission for verification or compliance purposes. ETEC elaborated that the affidavit is not a document that provides guidance or assistance during an emergency and therefore should not be included in the EOP. However, ETEC stated it is not opposed to submitting the same affidavit as detailed under paragraph (d)(4) provided it is separate from being filed with the EOP.

Commission Response

The commission agrees with CenterPoint, TCPA, ARM, and ETEC that the affidavit requirement should be separate from the EOP. The commission's revision to proposed subsection (c)(1)(A) permits an entity to file with the commission a summary of the EOP,

and the commission modifies the EOP to be included as a part of that summary. These changes substantively address CenterPoint, TCPA, ARM, and ETEC's concerns.

ARM and TCPA requested that proposed paragraph (d)(4) retain the current rules requirement for an affidavit from an "owner, partner, officer, manager, or other official with responsibility for the entity's *operations.*" ARM asserted the rule could create a compliance bottleneck that "might span multiple REP operations as well as generation operations for affiliated power generation companies that would all have to go through the same individual." ARM believed the entity should be given discretion to determine the person with the best knowledge of the entity's operations and, under proposed paragraph (d)(4), would attest to those processes in the submitted affidavit included in the EOP. ARM referred to §25.71(d) (relating to General Procedures, Requirements and Penalties), §25.88(e)(2) (relating to Retail Market Performance Measure Reporting), and §25.91(d) (relating to Generating Capacity Reports), as containing language similar to its recommendations. Similarly, CenterPoint and TCPA requested an officer having binding authority over the entity should be able to make the affirmation under proposed paragraph (d)(4), and not just the "highest-ranking" officer.

Commission Response

The commission disagrees with ARM, TCPA, and CenterPoint as the attestation required under the rule mirrors the attestation required under §25.55(c) and 25.55(f) for weather emergency preparedness reports. For consistency and to impress upon entities the necessity of emergency planning, the commission retains the requirement in the proposed rule for the attestation to be signed by the highest-ranking officer.

Proposed §25.53(d)(4)(A) – Relevant Operating Personnel

Proposed paragraph (d)(4)(A) requires an affidavit to attest that the EOP has been reviewed and approved by appropriate executives.

Oncor recommended that proposed subparagraph (d)(4)(A) be amended to permit compartmentalization of training to personnel on portions of the EOP that are applicable to their work responsibilities and provided draft language consistent with this recommendation:

Commission Response

The commission agrees with Oncor's request to permit compartmentalization of training to personnel on portions of the EOP that are applicable to their work responsibilities and adopts Oncor's recommended language in adopted clause (c)(4)(C)(i). The commission's intent for this provision is to require relevant personnel be trained on the specific portions of an entity's EOP and required annexes to the extent applicable to their work functions.

LCRA recommended that proposed subparagraph (d)(4)(A) be deleted from the rule due to the subjectivity involved. Specifically, LCRA stated "it is impossible to affirm via affidavit an employee's personal and individual commitment" that "cannot be objectively verified by an entity's highest-ranking official." LCRA recommended proposed subparagraph (d)(4)(A) be modified to delete the phrasing "and such personnel are committed to following the EOP except to the extent deviations are appropriate as a result of specific circumstances during the course of an emergency."

Commission Response

The commission modifies this provision to require the affidavit to include an attestation that relevant operating personnel are "instructed" to follow applicable portions of the EOP except to the extent deviations are appropriate as a result of specific circumstances during the course of an event.

Consistent with its recommendations for proposed paragraph (d)(4), TCPA recommended the training requirement under proposed subparagraph (d)(4)(A) be more generalized.

Commission Response

The commission agrees with TCPA's recommendation and adopts its proposed language for relocated adopted clause (c)(4)(C)(i).

Proposed §25.53(d)(4)(C) – Required Drills

Proposed paragraph (d)(4)(C) requires an affidavit to attest that required drills have been conducted.

ETEC requested the commission clarify proposed subparagraph (d)(4)(C) which states "required drills have been conducted," in contrast to proposed subsection (f), which states that if the EOP was activated for an incident in the last 12 months, a drill is not required to be performed for that 12-month period. Accordingly, the two provisions could cause confusion, assuming that more than one drill is required per year.

Commission Response

The commission acknowledges the potential discrepancy identified by ETEC and adds a cross-reference to subsection (f) to adopted clause (c)(4)(C)(iii).

Proposed §25.53(d)(4)(D) – Distribution to Local Jurisdictions

Proposed paragraph (d)(4)(D) requires an affidavit to attest that the EOP or appropriate summary has been distributed to local jurisdictions as needed.

Sharyland, GVEC, and TEC opposed proposed subparagraph (d)(4)(D) unless the commission provided further clarification on the term "local jurisdictions." LCRA, TCPA, and CenterPoint recommended subparagraph (d)(4)(D) be deleted in its entirety. Sharyland requested clarification on the meaning of the term "local jurisdictions" as used in proposed subparagraph (d)(4)(D). Specifically, Sharyland requested the commission clarify the jurisdictions to which the utilities may be expected to distribute their EOPs or summaries. Similarly, GVEC and TEC argued that the term "local jurisdictions" in proposed subparagraph (d)(4)(D) is overly broad as it suggests "entities must have a plan for communicating with every conceivable local and state entity and official." GVEC argued that the term "local jurisdictions" is ambiguous and overly burdensome as entities are already required to have a public communications plan under proposed paragraph (d)(5). GVEC recommended that the commission delete or narrow the scope of proposed subparagraph (d)(4)(D) in order to reduce the undue administrative burden and costs it would otherwise impose on entities as well as mitigate security risks involved with disclosure to local jurisdictions. TEC argued that the local jurisdiction distribution requirement under proposed

subparagraph (d)(4)(D) undermines emergency operations at a time when resources may be strained. TEC recommended that the commission either "identify specific and limited governmental entities that should be included in a communication plan" or qualify proposed subparagraph (d)(4)(D) with "as appropriate in the circumstances for the entity."

CenterPoint asserted that "there is no legal mandate for entities to distribute their EOPs to local jurisdictions" and entities may not need or want to do so. CenterPoint further commented that the "as needed" qualification in the proposed subparagraph is ambiguous and should be clarified by the commission. Specifically, CenterPoint stated it is unclear what process would be used to determine the "need" of a local jurisdiction for an entity's EOP or who would be qualified to identify local jurisdictions that "need" the EOP using such a process.

Commission Response

The commission disagrees with Sharyland, GVEC, TEC, LCRA, TCPA, and CenterPoint and declines to delete the requirement for entities to coordinate with local jurisdictions in subparagraph (d)(4)(D). The rule does not require that an entity distribute its EOP to local jurisdictions. However, the entity must affirm that any local jurisdictions that need a copy of an entity's EOP have, in fact, received it. Emergency planning and an entity's obligations as a utility necessarily involve coordination with local jurisdictions served or impacted by the utility service the entity provides. As such, an entity must be aware of, and responsible for, identifying such local jurisdictions and distributing its EOP "as needed." The commission notes this requirement is adopted as clause (c)(4)(C)(iv) in the final rule.

LCRA and TCPA argued that distribution of the EOP to "local jurisdictions" under proposed subparagraph (d)(4)(D) jeopardizes the sensitive nature of the information provided in the EOP. TCPA argued there were "few, if any, scenarios that would warrant distribution of an EOP or any of its component procedures to a local jurisdiction" due to confidentiality concerns. LCRA also commented that the term "local jurisdictions" was ambiguous as used in the proposed subparagraph.

Commission Response

LCRA and TCPA's confidentiality concerns are substantially addressed by the commission's amendment to proposed paragraph (c)(1) permitting entities to submit an EOP summary and full, revised EOP with confidential portions removed to the commission and a full, unredacted EOP to ERCOT. Consistent with those changes and as discussed under heading (c)(1) the commission amends the proposed requirement to permit distribution of the EOP summary filed with the commission to local jurisdictions in lieu of a full, unredacted copy of an entity's EOP.

Proposed §25.53(d)(4)(E) – Business Continuity Plan

Proposed paragraph (d)(4)(E) requires an affidavit to attest that the entity maintains a business continuity plan that addresses a return to normal operations after an emergency.

TPPA requested clarification on what is included in the "business continuity plan" cited under proposed subparagraph (d)(4)(E).

Commission Response

The commission declines to define the form and content of a business continuity plan required under adopted clause (c)(4)(C)(v), as an entity is best situated to determine the practices and procedures relevant to its industry, locale, and customers when returning to normal operations after disruptions caused by an incident.

Proposed §25.53(d)(4)(F) – National Incident Management System Training

Proposed paragraph (d)(4)(F) requires an affidavit to attest that the entity's emergency management personnel who interact with government officials at all levels have received specific Federal Emergency Management Agency (FEMA) and National Incident Management System (NIMS) training.

CenterPoint, TCPA, and ARM recommended that proposed subparagraph (d)(4)(F) be deleted. ARM recommended moving the requirement for an entity to list emergency management personnel who have received NIMS training into proposed subparagraph (d)(4)(A) if proposed subparagraph (d)(4)(F) is deleted. Alternatively, ARM recommended proposed subparagraph (d)(4)(F) require only one employee within an entity be required to have received the specified NIMS training. Consistent with its recommendations for proposed subparagraph (d)(4)(A), TCPA similarly recommended proposed subparagraph (d)(4)(F) be deleted and the training requirement be more generalized and moved to (d)(4)(A). ARM and TCPA argued that proposed subparagraph (d)(4)(A) is unnecessarily burdensome due to the time requirements to complete the training and that some or all of the listed training may not available. ARM and TCPA further stated that the training requirement of proposed subparagraph (d)(4)(F) may create a communications bottleneck

during an emergency if entities are restricted to communicating through personnel with the required training. Specifically, TCPA commented that an entity may have multiple teams of personnel who act as points of contact for government officials and that the specific training included in the proposed subparagraph are impractically lengthy and may be unavailable.

Commission Response

The commission declines to delete the proposed requirement as CenterPoint, ARM, and TCPA recommend. The commission also disagrees with ARM and TCPA that requiring NIMS training for specific personnel is unnecessarily burdensome. NIMS is a widely adopted national emergency management program among governmental entities, and the proposed amendment appropriately limits the requirement to emergency management personnel who are designated to interact with local, state, and federal emergency officials during emergency events. This provision strikes an appropriate balance between ensuring emergency preparedness and over-prescribing requirements for the same. This requirement is adopted as clause (c)(4)(C)(vi).

The commission declines to adopt ARM's recommendation to limit required NIMS training to only one employee within an entity. It is conceivable that an entity may be organizationally structured so that one employee is the only "emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events," however the intention of the rule is to ensure that all such personnel have received NIMS training to maximize emergency response. Artificially limiting the training requirement to a single employee at an entity is contrary to the intent of the rule.

The commission declines to make the training requirement more generalized and move it from proposed subparagraph (d)(4)(F) into proposed subparagraph (d)(4)(A) as TCPA recommends. The commission instead moves the requirements of paragraphs (d)(2), (d)(3), and (d)(4) to adopted subparagraph (c)(4) and changes the requirements to permit these documents to be filed separate from the EOP.

TPPA recommended that the NIMS training citations in proposed subparagraph (d)(4)(F) be updated to the title of the course instead of the specific course number, otherwise proposed subparagraph (d)(4)(F) risks quickly becoming outdated. Similarly, Sharyland recommended revising updating the training citations in proposed subparagraph (d)(4)(F).

Commission Response

The commission agrees with Sharyland's recommendation for subparagraph (d)(4)(F) and amends adopted clause (c)(4)(C)(vi) accordingly. Specifically, the commission identifies that emergency management personnel should have received the latest NIMS training, specifically IS-100, ISs-200, IS-700, and IS-800.

TPPA further recommended that the commission clarify that non-emergency management personnel would not be covered by proposed subparagraph (d)(4)(F) and thus required to receive the specified NIMS training. Oncor interpreted the requirement of proposed subparagraph (d)(4)(F) as not to apply to "personnel designated to interact with ERCOT" as ERCOT is not a "political subdivision" and such personnel are required to take training programs from NERC,

ERCOT, and Oncor itself. Therefore, Oncor argued that such personnel should be exempted from the requirements of the proposed subparagraph. Oncor provided draft language consistent with its recommendation by adding the sentence "the entity's personnel who are designated to interact with ERCOT during emergency events are not subject to the requirements of this paragraph."

Commission Response

An employee that qualifies as emergency management personnel designated to interact with government officials must receive NIMS training. The commission agrees with TPPA that this requirement does not apply to non-emergency personnel, such as Mayors as per TPPA's example, that may also interact with government officials. The commission disagrees with Oncor that subparagraph (d)(4)(F) should explicitly exempt "personnel designated to interact with ERCOT." An entity may require certain personnel to only interact with ERCOT and other personnel to only interact with local, state, and federal emergency management officials. An entity is free to adopt such an organizational structure provided it complies with the requirements of this rule.

Proposed §25.53(d)(5) – Communication Plan

As discussed under heading (c)(1), the commission proposed subparagraph (d)(5) is adopted as paragraph (d)(2)

Proposed paragraph (d)(5) requires entities with transmission or distribution service operations, entities with generation operations, Retail Electric Providers (REPs), and ERCOT to develop a communications plan as detailed in subparagraphs (d)(5)(A) through (d)(5)(D), respectively.

OPUC requested each subparagraph under proposed paragraph (d)(5) include OPUC as a party to receive communications from an entity during an emergency as OPUC serves as a public information platform during emergencies. OPUC stated that including it would assist in the commission's intended goal for the "widest possible dissemination" of information.

Commission Response

Adopted subparagraphs (d)(2)(A) through (d)(2)(D) already include a requirement that entities describe the process for communicating with state government entities in their communication plans; however, the commission acknowledges OPUC's valuable role as an information platform during emergencies and agrees to require entities to specifically describe procedures for communicating with OPUC during emergencies.

Consistent with its general comments regarding notice of updates to an EOP or individual annexes. City of Houston requested that all entities, prior to changing or updating the communications plan under proposed paragraph (d)(5), coordinate and collaborate with local municipalities and critical infrastructure owners on the communication plan.

Commission Response

The commission declines to adopt the City of Houston's recommendation for proposed paragraph (d)(5) requiring an entity to coordinate with local governments and critical infrastructure owners for input or refinement of its communication plan prior to filing with the commission. As noted in the commission's response under the General Comments

heading, communications between an entity and its stakeholders require different forms, formats, and timelines. To create a single requirement for all entities would unnecessarily hamper an entity from using the most effective method of communicating with its stakeholders. Proposed paragraph (c)(1) of this section requires entities to file EOPs annually and proposed paragraph (c)(4) requires an entity to file an updated EOP if commission staff determines that the entity's EOP on file does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency. The commission maintains that these requirements provide the appropriate standard to determine whether an entity can effectively communicate during an emergency. The commission encourages an entity to take other reasonable measures, including communicating with its stakeholders for input and refinement of its communication plan but does not require it.

TPPA contended that a communication plan should be focused on "specific methods and forms of emergency communications" rather than processes on filing complaints. Additionally, TPPA responded that all entities are entitled to retain flexibility in communications given the nature of emergency events. TPPA expressed that proposed paragraph (d)(5) may violate an entities' First Amendment rights, as, in TPPA's view, "a state agency requiring revisions to a communications plan, on pain of penalties if the plan is deemed inadequate, presents very serious First Amendment concerns" and argued that the commission should not regulate an entities' communications with the public or media.

Commission Response

The commission declines to remove the provision in paragraph (c)(4) that would allow commission staff to seek revisions to an entity's communication plan as proposed by TPPA. The commission disagrees with TPPA's contention that allowing commission staff to request an updated EOP poses a threat to an entity's First Amendment rights if the requirement is applied to its communication plan. Requiring providers of a critical service, such as electricity, to maintain a plan for communicating with the public during a potentially life-threatening emergency is not a violation of the First Amendment, nor is allowing a state agency that is charged with ensuring the reliability of that service to complete a review of the adequacy of that plan.

Ensuring members of the public have access to critical information regarding their electric service during an emergency – which often carries with it the additional hazards of dangerous weather conditions, supply shortages, and unavailability of other critical services such as water or gas – is a compelling government interest. Further, the requirements of this rule are narrowly tailored by only requiring activation of these plans during an emergency, which is defined, in part, as a situation in which "the known, potential consequences of a hazard or threat are sufficiently imminent and severe that an entity should take prompt action to prepare for and reduce the impact of harm that may result from the hazard or threat" and by only requiring that an entity update its plan if it does not contain sufficient information for the commission to assess its adequacy.

TEC recommended clarifying that communications procedures in proposed subparagraphs §25.53(d)(5)(A) and (C) are for communicating and handling customer complaints during an emergency. SPS, AEP, and TNMP recommended adding the phrase "during an emergency" to modify "procedures."

Commission Response

The commission agrees with TEC, SPS, AEP, and TNMP's comments relating to the need to clarify the term "during an emergency" in relation to the communications plan required under adopted subparagraph (d)(2). Specifically, the commission revises adopted subparagraphs (d)(2)(A), and (d)(2)(C) as recommended by TEC to clarify that the procedures to include in an entity's communication plan are intended for communicating and handling customer complaints during an emergency. Further, the commission modifies adopted subparagraph (d)(2)(B) in accordance with the recommendations of TEC, SPS, and AEP by adding the phrase "during an emergency" to clarify that the procedures to include in an EOP communication plan are intended for communication during an emergency.

Consistent with its comments regarding proposed subparagraph (d)(4)(D) relating to the term "local jurisdictions," TEC commented that "local and state governmental entities, officials, and emergency operations centers" in proposed subparagraphs (d)(5)(A), (d)(5)(B), and (d)(5)(D) is overbroad and may challenge emergency operations. TEC recommended the commission "identify specific and limited governmental entities" to include in the proposed subparagraphs relating to

the communications plan or else qualify the phrase as it appears in each subparagraph with "as appropriate in the circumstances for the entity."

Commission Response

The commission modifies adopted subparagraphs (d)(2)(A), and (d)(2)(B), as requested by TEC to add the phrase "as appropriate in the circumstances for the entity" to qualify the requirement that an entity describe the procedures for communicating with local and state governmental entities, officials, and emergency operation centers. The commission declines to modify adopted subparagraph (d)(2)(D) as requested by TEC due to the widespread audience ERCOT must reach. It is the commission's intent that an entity's communication plan addresses how the entity will communicate with appropriate local and state governmental entities, officials, and emergency operation centers during an emergency.

Proposed §25.53(d)(5)(A) – Communications Plan (Transmission and Distribution)

ETEC commented that the term "Reliability Coordinator" as it appears in proposed subparagraph (d)(5)(A) and (d)(5)(B) is undefined and therefore unclear. ETEC requested the commission add, or incorporate by reference a definition for the term "Reliability Coordinator" for clarity.

Commission Response

The term reliability coordinator is an industry term that is not ambiguous in context. However, to provide additional clarity, the commission modifies subparagraph (d)(2)(A) to specify that an entity with transmission or distribution service operations must include in its

communication plan procedures for communicating with the reliability coordinator "for its power region."

LCRA requested the commission clarify that the "procedures for handling complaints" under proposed subparagraph (d)(5)(A), "specifically refers to complaints from the utility's end-use retail customers." LCRA noted that without such language, an entity may receive unrelated complaints regarding utility rates, service boundary disputes, and others, which are not relevant to an entity's EOP. GVEC requested the commission amend proposed subparagraph (d)(5)(A) for general clarification regarding communications plans. Like LCRA, GVEC specifically requested language identifying the "type of complaint" referred to and recommended as an example "complaints related to the emergency event" as proposed language.

Commission Response

The commission acknowledges LCRA's request to revise proposed subparagraph (d)(2)(A) to qualify that the procedures for complaints during emergencies be limited to retail end-use customers. Likewise, the commission acknowledges GVEC's request to provide more detail and specificity concerning the communications plan and to specify that complaints should be related to the emergency event. The commission maintains that the response to the comments of TEC under heading (d)(5) revising adopted subparagraphs (d)(2)(A), and (C) as recommended by TEC to clarify that the procedures to include in an EOP are for communicating and handling customer complaints during an emergency, substantially address the concerns of LCRA and GVEC.

Proposed §25.53(d)(5)(B) – Communications Plan (Generation)

TPPA recommended proposed subparagraph (d)(5)(B) be deleted as it would require a generation entity to disclose its communications with fuel suppliers, which TPPA asserts is competitively sensitive information.

TCPA commented that the communications plan for generation entities under proposed subparagraph (d)(5)(B) does not need to require communication with the various groups listed as a result of every emergency due to potential ERCOT directives such as an ERCOT Operating Condition Notice (OCN). TCPA elaborated that an OCN precedes declaration of an actual emergency and "do[es] not warrant a communication step." Requiring communications in similar events would be inefficient. ETEC commented that generation entities are neither open to the public nor do they typically communicate directly with the public, and instead are dispatched by the applicable reliability coordinator directly. As such, generation entities routinely ensure the applicable reliability coordinator and connected transmission and distribution providers receive updated communications. For these reasons, ETEC commented that the requirement of proposed subparagraph (d)(5)(B) is overly burdensome and requested that it be revised to "clarify and limit the outlets with whom entities with generation operations must communicate."

Communication Plan

The commission declines to adopt TPPA's proposal to delete proposed subparagraph (d)(5)(B). The commission notes that having a plan in place for engaging in communication between an entity with generation operations and its fuel suppliers is vitally important to ensure a sufficient supply of fuel during emergency conditions and therefore declines to

remove the requirement from an entity's communication plan. However, the contents of the plan need not identify specific fuel suppliers.

In response to the comments of TCPA and ETEC, the commission refers to its response to TEC above. The commission modifies adopted subparagraph (d)(2)(B) to add the phrase "as appropriate in the circumstances for the entity" to qualify the requirement that an entity describe the procedures for communicating with local and state governmental entities, officials, and emergency operation centers. It is the commission's intent that an entity's communication plan addresses how the entity will communicate with appropriate local and state governmental entities, officials, and emergency operation centers during an emergency.

Proposed §25.53(d)(5)(C) – Communications Plan (REP)

Proposed §25.53(d)(5)(C) requires a REP to include as a part of its communication plan procedures for communicating with the public and handling complaints during an emergency.

ARM argued that complaint handling is an important REP function, but that "complaint handling would [not] be impacted by most emergencies" and the purpose of the requirements to address complaint handling during an emergency is unclear. ARM noted that §25.485 (relating to customer access and complaint handling) requires REPs to investigate and respond to complaints within 21 days as opposed to emergencies which are generally "acute events." ARM recommended deleting the provision.

Commission Response

The commission declines to remove the requirement that a REP's EOP describe procedures for handling complaints during an emergency as requested by ARM. ARM is correct that §25.485 gives a REP 21 days to respond to complaints, but it also requires that REPs provide reasonable access to service representatives and have a toll free line that affords customers a prompt answer during normal business hours. Depending on the severity of the emergency, customer complaints may rise dramatically during the emergency and there must be procedures in place for the REP to collect and respond to the increased number of complaints in a timely manner. A REP's communication plan should include the procedures that allow the REP to adapt to differing levels of complaints during an emergency. If, however, as ARM suggests, a REP believes that its standard complaint processing procedures can withstand the increased level of complaints associated with emergencies, it may submit its standard complaint handling procedures as its emergency procedure.

TLSC recommended that proposed subparagraph (d)(5)(C) specify procedures for communicating with customers medically dependent on electricity during an emergency.

Commission Response

The commission agrees with the concern raised by TLSC and acknowledges that medically dependent customers may need targeted communication during and prior to imminent emergencies to allow these customers to plan to evacuate or have a backup supply of electricity available. However, the commission declines to make the recommended change. Adopted subparagraphs (d)(2)(A) and (d)(2)(C) require entities with transmission and

distribution service operations and REPs respectively to describe the procedures for communicating with customers. This requirement encompasses all customers, including the segment of customers that are medically dependent on electricity.

Octopus supported the intent of proposed subparagraph (d)(5)(C) in ensuring REPs have procedures in place to communicate with customers during an emergency. However, to ensure a REP can effectively do so, Octopus recommended the commission add a requirement that a REP verify that it has a current phone number or email address for each of its customers in case emergency communications are necessary as well as specify the medium of such emergency communications.

Commission Response

The commission declines to make the changes to adopted subparagraph (d)(2)(C) as requested by Octopus. The commission already requires a REP's communication plan to address the procedures to communicate with customers during an emergency. Further, adopted subparagraph (c)(3)(A) requires an entity to file an updated EOP if the entity has made a significant change to its EOP. Otherwise, under adopted subparagraph (c)(3)(B), an entity may provide a summary of minor changes, an attestation that the changes are not significant, and the affidavit required under adopted subparagraph (c)(4)(C).

Proposed §25.53(d)(6) – Emergency Response Supplies

Proposed paragraph (d)(6) requires an EOP to include a plan to maintain pre-identified supplies for emergency response.

TLSC requested inclusion of language in proposed subparagraph (d)(6) requiring an entity to "maintain pre-identified supplies for emergency response to customers medically dependent on electricity."

Commission Response

The commission declines to revise subparagraph (d)(6) as requested by TLSC. The intent of proposed subparagraph (d)(6), adopted as (d)(3), is to ensure that an entity responding to an emergency has sufficient supplies to support its response efforts in ensuring continuity of electric service. However, the commission does not specify which supplies are required to be pre-identified, so an entity may include a plan for maintaining pre-identified supplies for emergency response to customers medically dependent upon electricity, as appropriate or if required by another provision of law.

Proposed §25.53(d)(7) – Emergency Response Staffing

Proposed paragraph (d)(7) requires an EOP to include a plan that addresses staffing during an emergency response.

Octopus recommended that emergency staffing plans required under proposed paragraph (d)(7) require an entity to identify resources outside of the ERCOT service area, if any, as access to such resources could be crucial in their emergency response efforts.

Commission Response

The commission declines to revise proposed subparagraph (d)(7) as requested by Octopus. An entity's plan for staffing must necessarily consider mutual aid assistance or other forms of staffing if the entity's staff is insufficient to adequately respond to an emergency. This includes securing staff needed from areas unaffected by the emergency. The commission further notes that the scope of this rule is not limited to entities operating in the ERCOT power region but to all entities operating in the State of Texas, regardless of power region.

Proposed §25.53(e) and §25.53(e)(1) – Annexes Required in EOP

Proposed subsection (e) and proposed paragraph (e)(1) list the annexes that must be included in the EOP for transmission and distribution facilities owned by an electric cooperative, an electric utility, a municipally owned utility, or a transmission and distribution utility.

ARM generally opposed the requirement to file separate annexes in subsection (e) as operationally unnecessary, administratively burdensome, and risking competitively sensitive information. ARM stated that while a REP should be prepared for different types of emergencies, separate annexes should only be required if a REP's existing EOP does not include procedures for the emergencies listed within (e). Similarly, consistent with ARM's comments for subsection (d), EPEC recommended not requiring the annexes be consolidated into the EOP as subsection (e) requires because it will be time-consuming to combine them and that annexes are distributed on an as-needed basis among business units or personnel within a utility. Additionally, in EPEC's view, a comprehensive summary should be sufficient for the needs of the commission and a combined EOP is not helpful for utilities when undertaking EOP procedures.

Commission Response

The commission disagrees with ARM's assessment of subsection (e) of the proposed rule as operationally unnecessary, administratively burdensome, and risking competitively sensitive information. The proposed rule does not require an entity to create a new or separate set of procedures for responding to different types of emergencies, unless an entity's existing EOP does not fulfill the rule's minimum requirements, nor does the rule mandate a particular format or organizational structure for the EOP. EOP summaries and confidentiality are substantively addressed by the commission under headings (c), (c)(1), and (c)(1)(A).

TLSC expressed concern that the proposed rule did not adequately address the needs of vulnerable members of the public, such as individuals with disabilities or those medically dependent on electricity. TLSC generally requested the commission clearly make the safety of critical care and chronic condition customers a priority in this rulemaking and emphasized that Texans who rely on DME may lack physical and financial resources to provide their own back-up power necessary for continued use of their essential equipment.

TLSC maintained that the critical load customer registry is crucial for emergency planning for power outages and could be used to be more inclusive of vulnerable individuals and emphasize public awareness during a load shed event. TLSC argued that local utility providers should use the critical load customer registry to identify vulnerable populations within their jurisdiction and incorporate the risks and needs of those individuals in EOPs. TLSC emphasized that "residential customers integrated into the community living in single family homes and apartments who are

medically dependent on electricity should be treated separately from other critical load customers" such as hospitals or natural gas production facilities.

TLSC opposed commercial entities having priority over residential customers, particularly residential customers under critical care or suffering from chronic conditions. TLSC proposed that each annex listed under subsection (e) be required to include procedures detailing the exchange of protected customer information, identifying customers medically dependent on electricity, how power dependent needs will be identified and planned for, how wellness checks will be conducted, identifying supplies and equipment available for emergency response, and generally be inclusive of the needs of vulnerable populations.

Commission Response

The commission substantively addresses the comments, concerns, and recommendations from the January 11, 2022 public hearing that overlap with TLSC's proposals under the heading EOP Public Hearing.

Regarding TLSC's comments that are not substantively discussed under that heading or elsewhere in this preamble, the commission responds as follows. In response to TLSC's proposal for residential customers medically dependent on electricity to be treated separately from critical load customers, the critical load rule already accounts for such a distinction under §25.497(2) and (3).

The commission disagrees with TLSC that commercial entities have priority over residential customers under current commission rules. The commission, as required by statute, provides discretion to utilities in determining how to prioritize between different types of critical load during energy emergencies. Each type of critical load is deemed to be critical based on its importance to public welfare, and the commission has not categorically prioritized any one type of critical load over another. However, PURA §38.076 requires the commission to adopt rules to "allocate load shedding" and "categorize types of critical load." The commission will implement this statutory requirement in a future rulemaking project. The treatment of different types of critical loads is an ongoing area of focus of the commission but is beyond the scope of this rulemaking.

GVEC contended that some of the items required by subsections (d), such as affidavits, and (e), such as distribution logs, pre-event plans, and after-action reports, are substantially different from and additional to essential EOP information. GVEC proposed that such additional materials be separated into a different document in order to preserve the functionality of an EOP for its intended use.

Commission Response

The commission agrees with GVEC's recommendation as addressed in the commission's responses under heading (c). The commission has also substantively responded to GVEC's concerns in other headings. Specifically, under heading (c)(1), the commission moves the requirements of paragraphs (d)(2), (d)(3), and (d)(4) into subsection (c) and permits these documents to be filed separate from the EOP. Further, the commission removes the

requirement for an entity to file an after-action report after each activation of its EOP by deleting proposed subparagraph (c)(1)(C). Additionally, under headings (e)(1)(A)(iii) and (e)(1)(B)(iii), and (e)(2)(A)(iv) and (e)(2)(B)(iii), the commission removes the requirements for pre- and post-event meetings and merges the hot and cold weather annex requirements into a single annex for both transmission and generation entities under proposed paragraph (e)(1) and (e)(2), respectively. Lastly, as discussed under heading (c), (c)(1), and (c)(1)(A), the commission amends adopted subparagraph (c)(1)(A) by permitting a summary of the EOP and complete copy of the EOP with confidential portions removed to be filed with the commission in lieu of a full unredacted EOP.

Consistent with its comments for subsection (d), LCRA generally opposed rigid requirements for the contents of an EOP, specifically with regard to the annexes that must be included under (e), as organizational needs may vary by entity.

Commission Response

The commission disagrees with LCRA's assessment that the proposed rule's requirements for annexes under subsection (e) are rigid. The proposed rule does not require an entity to make changes to its existing EOP, unless the plan does not satisfy the rule's minimum requirements, nor does the rule prescribe a specific organization or format for an entity's EOP. Further, Tex. Util. Code §186.007 requires the commission to analyze EOPs to determine the ability of the electric utility industry to withstand extreme events. Subsection (e) details the annexes that at a minimum should be addressed in an entity's EOP, as those related hazards and threats have the potential to affect the continuity of electric service. The

commission agrees that organizational needs vary by entity, as do potential hazards and threats. Therefore, the proposed rule allows an entity to include additional annexes, if necessary, or to provide an explanation of why any required provision in this section is inapplicable.

TPPA proposed the inclusion of a provision within subsection (e) permitting the submission of a single annex for vertically integrated utilities that operate transmission and distribution lines as well as generation resources, such as MOUs, provided the filing entity clearly indicates that the annex covers both. TPPA further opined that due to anticipated time constraints between the new rule and the proposed filing date of EOPs, proposed §25.53(e) should be significantly diminished in scope or removed as a requirement. TPPA emphasized that the rulemaking effort should focus on requiring EOPs so that the commission can submit its statutorily required weather emergency preparedness report to the Legislature required under Tex. Util. Code §186.007. TPPA insisted that many of the annexes listed under proposed 25.53(e) "do not relate to weather emergency or weatherization preparedness" and concluded that the primary EOP under proposed §25.53(d), in conjunction with §25.55, is sufficient in providing information from utilities.

Commission Response

The commission agrees with TPPA that a single annex with proper notation may be submitted for entities that operate both transmission and distribution lines and generation resources and modifies the rule accordingly.